

A judgment, of course, may be corrected by proper order nunc pro tunc, but a new and different judgment cannot be entered. In other words, a nunc pro tunc entry may not lawfully be employed to amend the record so as to make it show that some act was done at a former term, which might or should have been done, but was not then performed.

I have been informed by the Prosecuting Attorney of Hamilton County that Sanders, when arraigned on the two indictments above referred to, did in fact plead guilty to each of said indictments. However, when sentence was imposed it was for unlawfully carrying concealed weapons but the record of such sentence was inadvertently entered in the wrong case.

The use of the word "suspended" in the nunc pro tunc entry in Case No. 29250 standing alone would be misleading, but when taken in connection with the recital that "it appearing that by *inadvertence* sentence of the court was recorded as committing defendant herein to the Ohio Penitentiary * * * it is now ordered nunc pro tunc that the sentence of Charles Sanders, *so inadvertently entered*, be, and hereby is suspended," it will be readily understood that the word "suspended," as therein used, means vacated. In other words, there was no attempt at suspension of sentence under the statute. On the other hand, it was a wiping out of a record of sentence in Case No. 29250.

As provided by Section 13720, General Code,

"A person sentenced for felony to the penitentiary * * * shall be * * * delivered into the custody of the warden of the penitentiary * * * with a copy of such sentence, and to be kept until the term of his imprisonment expires, or he is pardoned. * * * "

It is my opinion that it will be necessary for a new and proper certificate of sentence to be forwarded to you in order that the prisoner may be properly entered upon your records and your records be made to conform to the sentence actually imposed. Such certificate of sentence should be immediately obtained from the Clerk of the Court of Hamilton County, Ohio.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1831.

ANNUAL FINANCIAL REPORT OF MUNICIPALITY—MUST BE PUBLISHED IN NEWSPAPER—SECTION 291, GENERAL CODE, CONSTRUED—MUNICIPALITY MAY PUBLISH REPORT IN ADDITIONAL WAYS.

SYLLABUS:

1. *The annual financial report made by the fiscal officer of a municipality in accordance with Section 291, General Code, should be published in a newspaper as provided in Section 291, General Code.*

2. *A municipality, by virtue of the home rule provisions of the Constitution, may provide for the publication of financial reports in any manner it sees fit in*

addition to the publication of the financial report made by the fiscal officer as provided by Section 291, General Code.

3. *The penalty provided in Section 291, General Code, may be exacted from the fiscal officer of a municipality for failure to publish the annual financial report of a municipality as required by said section.*

COLUMBUS, OHIO, March 9, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your communication requesting my opinion in answer to the following questions:

“Question 1: Must the annual financial report of the chief fiscal officer of a city whose charter provides for publication of ordinances, resolutions, etc., in a city bulletin, be published in a newspaper as provided in Section 291?”

Question 2: May the council of a municipality which has adopted a charter, providing that ordinances, resolutions and reports shall be published in the manner provided for by council, legally provide for the publication of the chief fiscal officer's annual report in pamphlet form?

Question 3: In the absence of a charter provision or ordinance provisions adopted by the council of a charter city to the same effect, may the penalty provided for in Section 291 G. C. be exacted if such fiscal officer fails to publish his annual report on or before the 31st day of March?”

The financial report to which you refer is that report provided for by Section 291, General Code, as amended by the 87th General Assembly (112 v. 355), which reads as follows:

“On or before the thirty-first day of March annually, the chief fiscal officer of each political subdivision or taxing district of each county shall prepare a financial report for the preceding fiscal year, in such form as will comply with the requirements of the bureau of inspection and supervision of public offices, and shall cause same to be published in a newspaper published in the political subdivision or taxing district and if there is no such newspaper, then in a newspaper of general circulation in the district or political subdivision.

Any fiscal officer of any political subdivision or taxing district of any county who fails to comply with the provisions of this section shall forfeit and pay into the treasury of such subdivision or district five dollars for each day, after the said thirty-first day of March, of the period of such failure. Nothing in this section shall be construed so as to apply to a county auditor.”

Prior to the amendment of Section 291, General Code, by the 87th General Assembly, it contained practically the same provisions as now, except as to the manner of publication of the report. The former section provided that fiscal officers of each county or other political subdivision or taxing unit should prepare an annual report, in such form as would comply with the requirements of the Bureau of Inspection and Supervision of Public Offices, and provided further that said fiscal officers

"shall cause such parts thereof to be published as may be ordered by said bureau."

It will be noted that said former Section 291, *supra*, before its amendment, did not provide how or in what manner the said report should be published, whereas the section as amended provides that the publication shall be

"in a newspaper published in the political subdivision or taxing district and if there is no such newspaper, then in a newspaper of general circulation in the district or political subdivision."

It is quite apparent that the Legislature intended by this amendment to control how the publication of the report should be made, rather than leave it to the discretion of the fiscal officer or the municipal authorities. However, the intent of the Legislature is not controlling, unless the Legislature had the power to provide the method by which publication of these reports should be made.

The Constitution of Ohio, in Article XVIII, Sections 3 and 13, provides as follows:

"Sec. 3. Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.

Sec. 13. Laws may be passed to limit the power of municipalities to levy taxes and incur debts for local purposes, and may require reports from municipalities as to their financial condition and transactions, in such form as may be provided by law, and may provide for the examination of the vouchers, books and accounts of all municipal authorities, or of public undertakings conducted by such authorities."

The question to be determined, in considering whether or not publication of the financial report in a municipality must be made as provided in Section 291, *supra*, when the municipality has by charter or otherwise, provided for its publication in some manner other than the manner provided by the statute, is whether or not it is a matter coming within the constitutional provision authorizing municipalities to exercise all powers of local self-government as provided by Article XVIII, Section 3 of the Constitution of Ohio. In other words, is the publication of this report a matter incident to local self-government or is it incident to the power of the State to require reports from municipalities as to their financial condition and transactions?

The Constitution, by Article XVIII, Section 13, directs that laws may be passed by the General Assembly to require reports from municipalities as to their financial condition and transactions. In pursuance to this constitutional authority Section 291, General Code, as originally enacted, provided that these reports should be made in such form as to comply with the requirements of the Bureau of Inspection and Supervision of Public Offices, and that they be published, but made no provision as to the manner of publication. By amendment, it was directed that the said report should be published in a newspaper.

It seems clear that the authority to require the making of these financial reports includes the authority to provide for their publication. By the same section of the Constitution as that which authorizes the passage of laws requiring reports, authority is given to provide for the examination of the accounts of municipalities

and if the report which may be required is only for the use of the State or its Bureau of Accounting the same result might be obtained by providing for an examination of the accounts. If the State sees fit to provide for the making of a report as it has done, it has authority to make that report available for the uses for which it is intended by providing for its publication in any manner it sees fit. It is therefore my opinion that the Constitution, by its provision in Article XVIII, Section 13, has made not only the making of the report but its publication a matter of State regulation and it is not therefore a subject of local self-government.

Specifically answering your questions in the order asked, it is my opinion:

First, that the annual financial report of the chief fiscal officer of a city must be published in the manner provided by Section 291, General Code.

Second, a municipality by virtue of the home rule provisions of the Constitution may provide for the publication of financial reports in any manner it sees fit in addition to the publication of the financial report made by the fiscal officer as provided by Section 291, General Code.

Third, the penalty provided in Section 291, General Code, may be exacted from the fiscal officer of a city for failure to publish the annual financial report of a municipality as required by said section.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1832.

CORPORATION—REDUCTION OF CAPITAL BY REDEEMING SHARES
NOT REQUIRED TO BE CANCELED—NOT REQUIRED TO FILE
CERTIFICATE WITH SECRETARY OF STATE—REDEMPTION OF
SHARES DISCUSSED.

SYLLABUS:

1. *A corporation which reduces its stated capital by redeeming shares which are not required to be canceled upon redemption is not required to file a certificate of such action with the Secretary of State.*

2. *Shares which, by the articles of incorporation, are subject to redemption, or redemption and cancellation, may be purchased by a corporation in anticipation of the redemption date and such shares become treasury shares until the redemption date. At the date fixed for redemption formal action should be taken by the board of directors redeeming such shares, which thereupon become authorized but unissued shares, unless the articles also require cancellation, in which event the authorized number of shares is reduced and a certificate thereof must be filed with the Secretary of State.*

COLUMBUS, OHIO, March 10, 1928.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication reading as follows:

“Having reference to Section 39 of the general corporation act you will note that there are apparently two certificates called for by this section, one