

for the provision in section 2400 G. C., to apply; in 1923 and 1924, impossible; in 1925 and 1926, possible; in 1927 and 1928, impossible. In subsequent years, the same variation would obtain.

The question is whether the legislature intended a situation such as this to obtain, whereby during a period of two years the president of the board of county commissioners is chosen in one way, and during the next two years by another way, to-wit by the action of the commissioners themselves.

Upon reflection it seems to me that the better view is that the provision in question, found in section 2400 G. C., is to apply when the situation produced by the amendment of section 2395 G. C. is such that it *can* apply. Courts and others called upon to construe a statute are not at liberty to hold it ineffective merely because of the oddity of its provisions, or the peculiarity of its effect when applied to another statute. While we may see no good reason for a rule that says that the county commissioners can elect their own president only two years out of every four, we must admit that it would be competent for the legislature to make such a rule.

You are therefore advised that if on the third Monday of September of any year, when the board of county commissioners organizes under section 2400 G. C., there is then on such board a commissioner whose term *first* expires, such commissioner shall be president of the board, and the members thereof are without authority in such a case to elect any other member as president.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2504.

INTOXICATING LIQUORS—MAYOR OF VILLAGE MAY COMMIT PERSON TO COUNTY JAIL FOR NON-PAYMENT OF FINE ASSESSED IN PROSECUTION UNDER CRABBE ACT—IN SUCH COMMITMENT, COUNTY AUDITOR CANNOT LEGALLY DISCHARGE SUCH PERSON FROM COUNTY JAIL.

1. *Under the provisions of section 4559 G. C. the mayor of a village may commit a person to the county jail for the nonpayment of the fine assessed in a prosecution under the Crabbe act.*

2. *In case of such commitment, the county auditor cannot legally discharge such person from the county jail under the provisions of section 2576 G. C.*

COLUMBUS, OHIO, October 24, 1921.

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

GENTLEMEN:—Acknowledgment is made of your recent communication requesting the opinion of this department upon the following questions:

“(1) May the mayor of a village commit a person to the county jail for the non-payment of fines assessed under the Crabbe act?

(2) In case of such commitment may the county auditor discharge such person from the county jail under the provisions of section 2576 G. C.?”

In considering your first inquiry your attention is directed to section 4559 G. C., appearing under the subdivision of "Cities and Villages" of Chapter I, which relates to the jurisdiction of mayors, which provides :

"When a fine is the whole or part of a sentence, the court or mayor may order that the person sentenced shall remain confined in the county jail, workhouse, or prison, until the fine and costs be paid, or secured to be paid, or the offender be otherwise legally discharged."

It would seem from an analysis of this section that it applies to the mayor of a village. Section 6212-18 G. C. (a part of the Crabbe act) gives "any justice of the peace, mayor, * * * final jurisdiction to try such cases * * * unless imprisonment is a part of the penalty." The Crabbe act does not make any special provision relative to the commitment of persons to jail for the nonpayment of fine and costs. However, it appears to be clear that section 4559, supra, has a general application and applies to all cases in which the justice of the peace has jurisdiction. Therefore, in specific answer to your first inquiry, you are advised that the mayor of a village may legally commit a person to the county jail for the non-payment of a fine assessed under the Crabbe act.

Section 2576 G. C., to which you refer in your second inquiry, provides :

"The county auditor may discharge from imprisonment any person confined in the county jail for the non-payment of a fine or amercement due the county, except fines for contempt of court or an officer of the law, when it is made clearly to appear to him that the fine or amercement cannot be collected by such imprisonment."

A perusal of the statute discloses that the authority therein conferred upon a county auditor to discharge a prisoner is limited to those cases in which one is imprisoned for the nonpayment of a fine "due the county." In view of this language it would seem impossible to construe said section to cover a case in which one is committed to the county jail by a mayor of a municipality or a justice of the peace for the nonpayment of a fine assessed under the Crabbe act. Under such circumstances, by reason of the provisions of section 6212-19 G. C., one-half of the fine goes to the state and one-half to the township or municipality wherein the prosecution is held. Therefore, under such conditions, there is no part of the fine due the county.

Therefore, in specific reply to your second inquiry, it is the opinion of the attorney-general that the county auditor is not authorized to discharge an indigent prisoner under the provisions of section 2576 G. C., where the commitment is made by the mayor of a village for the nonpayment of the fine and costs in a prosecution instituted under the Crabbe act.

Respectfully,

JOHN G. PRICE,
Attorney-General.