

Section 5652-7c is a penal section, it being provided therein that "whoever fails to comply with the provisions of this section, on conviction shall be fined not less than five dollars, nor more than twenty-five dollars." It is too well-settled to require the citation of any authority that the provisions of a penal section are to be strictly construed, and that in order to enforce a penalty against a person he must be brought clearly within both the spirit and the letter of the statute. As stated in 36 Cyc. 1185:

"But, if the acts alleged do not come clearly within the prohibition of the statute, its scope will not be extended to include other offenses than those which are clearly described and provided for; and if there is a fair doubt as to whether the act charged is embraced in the prohibition, that doubt is to be resolved in favor of the defendant."

For these reasons, in answer to your third question it is my opinion that Section 5652-7c of the General Code, as enacted in House Bill No. 164, passed by the 87th General Assembly, applies only to the transfer of ownership of a dog duly registered or required to be registered and has no application in case of the transfer of ownership of a dog bought from another state, or of a dog not over three months of age, or of a dog bred or kept for sale in a duly registered kennel.

Respectfully,
EDWARD C. TURNER,
Attorney General.

968.

COMMON PLEAS JUDGES—JUDGES IN OFFICE PRIOR TO AUGUST 10, 1927, NOT ENTITLED TO INCREASED COMPENSATION AS PROVIDED BY HOUSE BILL NO. 61, 87TH GENERAL ASSEMBLY.

SYLLABUS:

The increased compensation for common pleas judges as provided by House Bill No. 61, passed by the 87th General Assembly, can not be paid to judges, who were in office August 10, 1927, for the remaining portion of their present terms.

COLUMBUS, OHIO, September 8, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion as follows:

"House Bill No. 61, passed at the recent session of the General Assembly, by amending Section 2252 G. C., increased the compensation of Common Pleas Judges payable out of the county treasury.

QUESTION 1. May this increased compensation be paid to judges holding office at the time the act became effective?

Section 2253 of the General Code, as amended by the same act, provides that each judge of the court of common pleas, who is assigned by the Chief Justice on business in some county other than that of his residence, shall receive \$20.00 per day for each day of such assignment and his actual and

necessary expenses. Formerly the compensation provided in this Section was \$10.00 per day.

QUESTION 2. May judges in office at the time the act became effective receive \$20.00 per day for such services rendered after the effective date of the act?"

House Bill No. 61, passed by the 87th General Assembly became effective August 10, 1927. By its terms the salary and per diem compensation and expenses, while holding courts in counties other than those of their residence, of judges of the courts of common pleas are fixed at amounts greater than that which previously had been provided therefor. The question arises whether or not judges whose term of office had begun prior to the effective date of House Bill No. 61 may be paid the increased compensation provided for by the act.

Article II, Section 20 of the Constitution of Ohio reads as follows:

"The general assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished."

Article IV, Section 14 of the Constitution of Ohio reads as follows:

"The judges of the supreme court and of the court of common pleas shall at stated times receive for their services such compensation as may be provided by law; which shall not be diminished or increased during their term of office; but they shall receive no fees or perquisites, nor hold any office of profit or trust under the authority of this state or of the United States. All votes for either of them for any elective office, except a judicial office, under the authority of this state, given by the General Assembly or the people shall be void."

The language of the section of the constitution above quoted so clearly controls the question as to the right of the legislature to change the compensation of judges of common pleas courts as scarcely to call for interpretation, construction or comment. Article II, Section 20 of the Constitution of Ohio, has been considered many times by the Supreme Court of Ohio, a late case being the case of *State ex rel., Metcalf v. Donahey*, Auditor, 101 O. S. 490. That case involved the right of judges of the court of appeals to an increased salary provided by statute. That court being one specifically created by the Constitution it was contended that Section 20 of Article II of the Constitution could have no application to an office created by the Constitution. The Supreme Court, however, held that the language expressly comprehended all offices.

If there could be any question since the decision of the Metcalf case as to the applicability of Section 20 of Article II of the Constitution and of its having the effect of prohibiting common pleas judges from drawing increased salary during their term of office the language of Article IV, Section 14 is so specific and certain as to increased compensation as to remove all doubt about the matter. This language is not in the least doubtful or ambiguous but so clear as to admit of no uncertainty.

A similar increase in salary was granted to common pleas judges by the legislature in 1920, and the precise question, in so far as it related to that part of the increased compensation denominated as salary was raised by the common pleas judges of Cuyahoga County who were serving as such at the time when the act became effective. The court of appeals in the case of *State ex rel Stanton vs. Zangerle, et al.*, 32 O. C. A. 273, held as stated in the headnote:

"The act of February 4, 1920 (108 O. L. Part 2, 1301) so far as it applies to a judge of the court of common pleas in office at the time the act took effect is violative of Article IV, Section 14 of the Constitution of Ohio, and therefore void regardless of the source of payment of the salary."

So far as the increase in per diem compensation for judges holding court outside the county of their residence is concerned, in view of the language of Section 14, Article IV, supra, I am unable to see any difference in principle from the compensation provided for them by way of regular salary.

I am therefore of the opinion that the increase in compensation for common pleas judges by way of salary and per diem compensation for holding court outside the county of their residence as provided by the terms of House Bill No. 61 of the 87th General Assembly does not inure to the benefit of judges, during the remaining portion of their present term who were in office at the time the act became effective.

Respectfully,
EDWARD C. TURNER,
Attorney General.

969.

TRANSFER OF FUNDS—BOND PAYMENT FUND—HOUSE BILL NO. 80,
87TH GENERAL ASSEMBLY, DISCUSSED.

SYLLABUS:

1. *By virtue of Section 39 of House Bill No. 80, passed by the 87th General Assembly, the repeal of Sections 2296 et seq., and Section 3799 of the General Code is postponed until January 1, 1928, and transfers of funds may be effected in accordance with the provisions of said Sections 2296 et seq., and Section 3799, General Code, prior to January 1, 1928 to the same extent and in the same manner as might have been done prior to the effective date of said House Bill No. 80.*

2. *Prior to January 1, 1928, such portion of the funds of the "bond payment fund" of a municipality not needed for the liquidation of bond or interest obligations and the source of which is other than the proceeds or balances of special levies, loans or bond issues, may be transferred to other funds of the municipality by order of the common pleas court, upon application therefor, in accordance with the provisions of Sections 2296 et seq., of the General Code.*

COLUMBUS, OHIO, September 8, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your communication as follows:

"Sections 2296 et seq. and 3799 G. C., providing for transfers between funds were repealed by House Bill No. 80 passed April 13, 1927, and effective August 10, 1927. The second paragraph of Section 39 of said H. B. 80 provides that 'this act shall in no manner affect existing funds established in any subdivision or the expenditures therefrom until January 1, 1928, but upon such date all provisions of this act as to funds shall go into force and effect, and the balance, if any, in any special fund derived from a special tax levy within