

The premium belongs to the taxing district or the special assessment fund.

Since the fund for the payment of such bonds in excess of the premium received upon the sale is raised by taxation of the particular taxing district, and the amount to be so raised is decreased by the amount of the premium, the attempted authorization of the Commission to purchase without the payment of a premium amounts to a taxation of that particular district in excess of the taxation of any other district within the state in an amount equal to such premium, and violates the uniform rule provided in Section 2, Article XII."

Applying the reasoning of the above case, since the funds for the payment of such bonds in excess of the premium is raised by taxation in the municipal taxing district, and the amount to be raised is decreased by the amount of the premium, the attempted authorization of the sinking fund commissioners of a city school district to purchase without the payment of a premium amounts to a taxation of that particular district in an amount equal to such premium, which taxation is for the benefit of a separate political subdivision, to wit, the school district. As no other taxing district in the state is taxed for the benefit of this particular school district, it would violate Section 2, Article XII of the Constitution of Ohio that "Laws shall be passed, taxing by uniform rule, all moneys," \* \* \* for the reason that it would tax property in municipalities for support of a school district which is not coterminus with the boundaries of the municipality, and would not tax the property situated in the school district outside of the municipality uniformly.

Reasoning analogically from the Frazine case, it is my opinion that a city is not required to offer its bonds to the sinking fund trustees of a city school district as provided by Section 3922, General Code, before advertising for bids for the sale thereof.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

1675.

SENTENCE—PERSONS SENTENCED TO REFORMATORY FOR WOMEN  
—WHAT COMMITMENT PAPERS SHOULD SHOW.

SYLLABUS:

*Persons sentenced to the Reformatory for Women at Marysville, for not less than a certain designated period, shall not serve an additional number of days until the fine and costs have been worked out at the rate of sixty cents per day unless the commitment papers show that the judgment of the court was that such fine and costs were to be paid by allowing a credit of sixty cents per day while confined at the reformatory.*

COLUMBUS, OHIO, August 8, 1924.

HON. JOHN E. HARPER, *Director, Department of Public Welfare, Columbus, Ohio.*

Dear Sir:—

I am in receipt of your communication as follows:

"We have a letter from the Superintendent of the Ohio Reformatory for Women which reads as follows:

'Since a recent ruling of the Court of Appeals, sustained by the Supreme Court of Ohio on May 20, 1924, we have been at sea regarding the length of time misdemeanants must serve here. I am writing asking you to secure an opinion on the matter from the Attorney General. I am presuming the case as follows:

'A woman was convicted of a misdemeanor, fined \$50 and costs, and sentenced to serve six months in the Reformatory. She served the six months. Will she be required to serve an additional number of days until the fine and costs have been worked out at the rate of 60 cents a day, or, since this is a reformatory, should fine and costs be disregarded?'

"Will you please give us an opinion on the above?"

It is presumed that the case you refer to in your communication is *In Re Fenwick*, found in Ohio Law Bulletin for the week of June 30, 1924. In this case the defendant was found guilty of assault and battery and the court sentenced her to be confined in the Ohio State Reformatory for Women at Marysville for a period not to exceed six months and to pay a fine of \$200.00, costs taxed at \$187.00. In addition the court further ordered that in default of said fine and costs she be further confined at Marysville until such fine and costs were paid or until she be discharged therefrom by allowing a credit of sixty cents a day for each day confined, or be otherwise legally discharged.

The question raised in this case was whether the sentence was legal, considering the fact that section 2148-1 provides "that for misdemeanors or delinquency such term shall not be for more than three years", while the Criminal Code, with reference to assault and battery, provides for a maximum penalty of six months imprisonment and a fine of \$200.00, or both. The court held:

"A female offender sentenced to the Ohio Reformatory for Women upon conviction for a misdemeanor is not deprived of any constitutional right, provided such imprisonment is not for a longer period than any other offender of either sex might have been imprisoned in any of the penal institutions of the state under like circumstances."

This case is somewhat different from the one you submit, in that in the case submitted you do not state that the court sentencing the offender ordered that she be confined in the Reformatory at Marysville until fine and costs are paid or that she be discharged by allowing a credit of sixty cents per day upon such fine or costs.

Section 13717, General Code, provides:

"When a fine is the whole or part of a sentence, the court or magistrate may order that the person sentenced remain imprisoned in jail until such fine and costs are paid, or secured to be paid, or he is otherwise legally discharged, provided that the person so imprisoned shall receive credit upon such fine and costs at the rate of sixty cents per day for each day's imprisonment."

It will be noted that this section provides that the court "may order that the person sentenced shall remain confined in the county jail until the fine and costs are paid or secured to be paid."

In the case of *Young vs. State*, 11 Cir. Ct. (n. s.) p. 466, it was said by the court:

"This section of the statute provides that the magistrate *may* order the person confined in the county jail, but we apprehend that such order should be made a part of the sentence."

Section 13718, General Code, provides :

"When a magistrate or court renders judgment for a fine, an execution may issue for such judgment and the costs of prosecution, to be levied on the property, or, in default thereof, upon the body of the defendant. The officer holding such writ may arrest such defendant in any county and commit him to the jail of the county in which such writ issued, until such fine and costs are paid, or secured to be paid, or he is other legally discharged."

This section supplements section 12717, *supra*, in that it permits the issuance of an execution in a case where a fine is a part of the sentence, on property of defendant, and in default of property, such execution is levied on the body of the defendant.

In the case of *In Re Beall*, 26 O. S., 195, it was held by the court :

"The provision of the act of April 7, 1863 (S. & S. 610, sec. 2) authorizing the arrest on execution of a party against whom a fine has been adjudged, and his imprisonment until such fine be paid, or he be otherwise discharged according to law, is not unconstitutional; and the provision applies to all cases where the party is so adjudged to pay a fine, and it is not confined to cases where the party is adjudged to stand imprisoned until the fine and costs are paid."

It will be seen that a person may be imprisoned in jail, first, when the order of the court provides that in default of payment of fine and costs the person shall be imprisoned until such fine and costs are paid, or secured to be paid, or is otherwise discharged according to law, and, second, when such sentence is not part of the order and execution is issued as provided in section 13718.

As these sections specify imprisonment in jail, the question arises as to whether, in case defendant is a female, these sections are applicable.

Section 2148-7, General Code, provides :

"After the issuance of the first proclamation hereinbefore referred to, it shall be unlawful to sentence any female convicted of a felony to be confined in either the Ohio penitentiary or a jail, workhouse, house of correction or other correctional or penal institution, and after the issuance of the second proclamation it shall be unlawful to sentence any female convicted of a misdemeanor or delinquency to be confined in any such place, except in both cases the reformatory herein provided for, the girls' industrial school or other institution for juvenile delinquency, unless such person is over sixteen years of age and has been sentenced for less than thirty days, or is remanded to jail in default of payment of either fine or costs or both, which will cause imprisonment for less than thirty days, provided that this section shall not apply to imprisonment for contempt of court."

For the purposes of your question, this section, stripped of unnecessary words, may be read as follows :

" \*\*\* shall be unlawful to sentence any female convicted of a misde-

meanor \*\*\* to be confined in any such place, except in \*\*\* the reformatory herein provided for, \*\*\* unless such person is over sixteen years of age and has been sentenced for less than thirty days, or is remanded to jail in default of payment of either fine or costs or both, which will cause imprisonment for less than thirty days \*\*\*."

At the time of the passage of this section, sections 13717 and 13718 were operative and were not repealed by this act. It is a common rule of construction that statutes of similar nature must be construed together when the meaning of one is doubtful, and that a doubtful statute must be given a reasonable construction.

Section 2148-7 permits a female to be sentenced to jail when the sentence is for less than thirty days, and as the same section makes it unlawful to sentence for thirty days or more in a jail, it would not seem a reasonable construction to say that if the sentence is for less than thirty days a person may be imprisoned and if for more than thirty days such person may not be imprisoned.

To say that this section limits the imprisonment of a female in all cases to less than thirty days would, in cases where the maximum fine and cost and maximum sentence of imprisonment exceed twenty-nine days, make an unequal operation of the law as between male and female offenders. It must therefore be said that sections 2148-7, 13717 and 13718, together authorize confinement on conviction for misdemeanors in the women's reformatory when the sentence exceeds twenty-nine days. This conclusion is strengthened by the fact in the case of *In Re Fenwick*, supra, part of the sentence was imprisonment until released by allowing a credit of sixty cents per day on the fine. The Supreme Court, while not specifically passing on this point, held there was no invasion of a constitutional right.

Coming now to a specific answer to your question, it is my opinion that where the commitment papers provide for a period of imprisonment for six months and a fine of fifty dollars and costs, and there is no provision that in default of payment of fine and costs such person is to be further confined until released by allowing a credit of sixty cents per day on the fine and costs, such person must be released upon serving the six months. On the other hand, if the commitment papers provide imprisonment until released by allowing a credit of sixty cents per day, then such additional period should be served.

Respectfully,

C. C. CRABBE,  
*Attorney General.*

1676.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE WEISS HEATING AND PLUMBING COMPANY, OF CLEVELAND, OHIO, FOR PLUMBING, HEATING AND VENTILATING FOR ARMORY AT ASHLAND, OHIO, AT COST OF \$13,300.00.—SURETY BOND EXECUTED BY THE AETNA CASUALTY AND SURETY COMPANY.

COLUMBUS, OHIO, August 8, 1924.

HON. FRANK D. HENDERSON, *Adjutant General, Columbus, Ohio.*

Dear Sir:—

You have submitted for my approval a contract between the State of Ohio,