

to the state levy for taxation, in addition to all other taxes now or hereafter provided by law," certain tax levies. This language engenders a question as to whether the levies would be subject to limitations on aggregate tax levies now provided by statute. On the one hand, it might be argued that the language "in addition to all other taxes now or hereafter provided by law" is sufficient to exempt the proposed levy from such limitations. On the same side it might be asserted that the mere fact that the levy is directed expressly by the constitution itself would take it out of the operation of such limitations.

But there is much to be said on the other side. The limitations imposed by sections 5649-1 to 5649-5b of the General Code do not relate to particular levies as such, but to the aggregate of all levies which may be made in a taxing district. The mere fact that a certain levy is mandatory does not impliedly exempt it from these limitations; that fact merely operates to reduce the amount of the levies which are not mandatory and which are subject to those limitations. The mere language "in addition to all other taxes now or hereafter provided by law," if found in a statute, would not be enough to remove the proposed levy from consideration in applying the statutory tax limitations; such language is found in many statutes providing for tax levies, which contemporaneous and long continued executive action, sanctioned in many instances by court decision, has treated as subject to the limitations. To remove all doubt respecting the application of statutory tax limitations, it is suggested that language be incorporated in the appropriate place in the proposal specifically dealing with this point. For example, if it is desired that this levy shall be outside of all limitations, the way to make that certain is to write into line 25 of the joint resolution, after the word "bonds," provision to the general effect that "such levy shall not be considered in applying any limitation on aggregate tax rates now or hereafter provided by law."

I may add that the form of the ballot designation would seem to be inadequate and to raise serious question as to whether it would comply with the constitution, inasmuch as it does not expressly inform the elector that a constitutional amendment is being voted upon at all. Some other form of words would seem to be preferable here.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1822.

FISH AND GAME ACT—JUSTICE OF PEACE WITHOUT AUTHORITY TO SUSPEND SENTENCE IN SAID CASES, EXCEPT AS PROVIDED BY LAW AND ONLY BEFORE EXECUTION OF SENTENCE BEGINS—DISCHARGE, PAROLE OR RELEASE THEREAFTER UPON ORDER OF SECRETARY OF AGRICULTURE.

A justice of the peace is without authority to suspend sentence imposed for violation of the fish and game act, except as provided by law, and only before execution of sentence begins. Discharge, parole or release thereafter is upon the order of the secretary of agriculture.

COLUMBUS, OHIO, January 27, 1921.

HON. ROGER D. HAY, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—Receipt of the request of your predecessor, Hon. Victor L. Mansfield, which follows, is acknowledged:

"Will you please advise me whether or not a justice of the peace may suspend collection of fine, and execution of sentence for violation of section 1398 of the General Code of Ohio?"

The act codifying the fish and game laws of Ohio, to which you refer, may be found in 108 Ohio Laws, page 577. Section 1398 G. C. is a part of this act. It fixes (a) the dates of the open season for certain fur-bearing animals; defines the legal possession of the fur of any of them; and (b) describes certain methods or ways in which they shall not be taken. Legal taking is proper in any manner not prohibited.

Penalties for violations of any of the provisions of the act are set out in section 1454 G. C., as follows:

"Whoever violates the provisions of section 47 of this act shall be fined not less than ten dollars nor more than fifteen dollars, and for each subsequent offense shall be fined not less than fifteen dollars nor more than fifty dollars. Whoever violates the provisions of sections 26 and 52 of this act shall be fined not less than one hundred dollars nor more than five hundred dollars, and the costs of prosecution. Whoever violates any of the other provisions of this act shall be fined not less than twenty-five dollars nor more than two hundred dollars and the cost of prosecution, and upon default of payment of fine and costs assessed for any violation of this act he shall be committed to the jail of the county or to some workhouse, and there confined one day for each dollar of the fine imposed and the costs assessed. He shall not be discharged, paroled or released therefrom by any board or officers, except upon payment of the fine and costs or that portion of the fine and costs remaining unpaid or except upon the order of the secretary of agriculture."

The manner in which judgment shall be rendered, after conviction, is set out in section 1453 G. C., which is as follows:

"If the defendant in a prosecution or condemnation proceeding under the provisions of this act is convicted, judgment shall be rendered against him for the costs in addition to the fine imposed or forfeiture declared. The judgment shall be the first lien upon his property and no exemption shall be claimed or allowed against such lien. If he fails to pay the fine and costs imposed or execution issued is returned unsatisfied, the person convicted shall be committed to the jail of the county or to a workhouse and there confined one day for each dollar of fine and costs adjudged against him. He shall not be discharged or paroled therefrom by any board or officer except upon payment of the fine and costs remaining unpaid or upon the order of the secretary of agriculture."

Section 47 of this act (section 1437 G. C.) relates to trespassing, section 26 of the act (section 1415 G. C.) relates to the use of poison and explosive, and section 52 of the act (section 1442 G. C.) relates to the execution of warrants and arrests. In the remainder of section 1454, supra, violations of all other offenses of the act are provided for.

In reading the entire act one cannot fail to be impressed with its comprehensiveness and rigor. It is the intention of the law to be stern and severe to all violators of the act, so that, notwithstanding the fact that section 12375 G. C. provides "in all sentences in criminal cases, including violations of ordinances, the judge or magistrate shall include therein, and render a judgment against the defendant for the

costs of prosecution," judgment shall be rendered against him for the costs in addition to the fine imposed or forfeiture declared. Because it is expected, as an unavoidable consequence of guilt, that sentence will follow proper conviction, the legislature has made it mandatory to include costs of prosecution in all sentences under the fish and game act. No other conjecture is possible in view of the language of the act.

It is noticed that you say "suspend the collection of fine and execution of sentence," meaning thereby that fine, coupled with confinement, either as part of the punishment or to enforce collection of fine and costs, has been imposed. When sentence was suspended in this case, if at all, your letter does not disclose.

In *Dillon vs. State*, 38 O. S. 586, it is said :

"When the accused is properly convicted, it is the duty of the court to pronounce the judgment provided by law."

After the guilt of the accused has been determined, as required by law, the court imposes the punishment which is provided in the law, exercising its judgment within the limits fixed by the law as to the amount and weight thereof from the circumstances surrounding the case, as shown by the facts the hearing or trial disclosed. A court or magistrate is neglectful of duty and in default thereof when there is failure to pronounce the judgment provided by law.

Criminal statutes are strictly construed, and such strict construction excludes the exercise of power not therein expressly provided for. After guilt has been determined punishment must follow, and can only be ameliorated through the application of the law as found under our probation statutes.

A fine is a judgment, a sentence. See *Bouvier's Law Dictionary*. The right to suspend a sentence is the purpose for which certain statutes, called probation laws, have been enacted and such right may be well said to be statutory, at least so far as inferior courts are concerned, i. e., the right to suspend sentence is statutory.

A justice of the peace finds his authority to make suspensions under sections 13706 G. C. et seq. In certain cases only does the law afford him this right, which must be exercised before execution of sentence begins. It is, indeed, doubtful that courts not having terms, i. e., courts of limited or minor jurisdiction, may ever suspend a sentence, except in the manner provided by statute. It is well settled that after execution of the sentence has begun the court may not suspend or otherwise modify a proper sentence. If, as your letter seems to imply, execution of the sentence has begun, a justice of the peace is without authority to further interfere.

This department has several times passed upon different phases or variations of the question you have asked. Your attention is called to two opinions of this department found in *Opinions of the Attorney-General for 1919*, Vol. I, page 443, and Vol. II, page 1542, from the second of which the following is quoted :

"While the statutes are reasonably clear as to the authority of courts or magistrates to suspend or modify a sentence, when the accused has not been previously imprisoned for crime, in the construing of such law the courts have encountered some difficulty in determining the time at which the authority to suspend a sentence terminates after the same is pronounced. However, section 13706 supra was amended (108 O. L. 144), evidently for the manifest purpose of clearing up this point. Said section is the same as the original with the exception of the following clause, which was added in the amendment: 'at any time before such sentence is carried into execution.'

Paragraph 2 of section 13711 supra, specifically authorizes a court or magistrate to suspend the execution of a sentence in case of a judgment of imprisonment until the fine is paid, permitting the defendant to pay such fine within a reasonable time.

In specific answer to your inquiry I am of the opinion that a mayor or magistrate may legally suspend or modify a sentence, including the power to grant time to the defendant for the payment of a fine, provided the suspension is not for a longer period than two years and that the defendant has not previously been imprisoned for crime, if the same is done before said sentence is carried into execution and in the manner as provided by law."

These two opinions will furnish you with a very general discussion of your question.

There does not appear to be any reason to think the probation statutes, sections 13706 et seq., are not applicable to convictions under the fish and game act in a case coming properly under the provisions therein, if these provisions are applied in such proper case before the execution of sentence begins. Thereafter, discharge, parole or release is upon the order of the secretary of agriculture.

The conclusion, therefore, in this case is that suspension of sentence may be had only under the provisions of the probation statutes, if invoked before the execution of sentence begins, and that a justice of the peace has no power to suspend sentence except in accordance with the law as herein set forth.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1823.

TOWNSHIP OFFICERS—LIMITATION UPON MAXIMUM ANNUAL
COMPENSATION—STATUTES ONLY APPLICABLE TO PAYMENTS
MADE FROM TOWNSHIP TREASURY.

Under sections 3294, 3308 and 3318 G. C. the limitation upon maximum annual compensation of the township officers therein named has reference only to services for the township as such, for which payment is made by the township out of the township treasury; and payments by individuals, for the services of such officers, do not come within such limitation.

COLUMBUS, OHIO, January 27, 1921.

HON. FRANK KLOEB, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Your predecessor, Hon. Carroll A. Stubbs, made inquiry of this department as to whether in its opinion certain findings of an examiner of the Bureau of Inspection and Supervision of Public Offices, were correct. The findings in question are shown in the report of the examiner relating to the clerk, treasurer and trustees of Marion township, and the amounts as summarized are:

Frank Feltz, extra compensation as clerk.....	\$822 00
J. B. Goecke, extra compensation as treasurer.....	178 30
Fred Schroeder, extra compensation as trustee.....	85 00
John Roeckner, extra compensation as trustee.....	102 00
Joseph Neitfeld, extra compensation as trustee.....	106 00

These findings cover payments as far back as January, 1915, and they grow out