

"Counsel for the plaintiff in error contend that the distance from residence to school is to be taken 'as the crow flies.' The court below properly rejected this aerial view of the subject. The legislation provides for the convenience of children in attending school and the distance is to be taken as they travel on the most direct public highway from the school house to the nearest portion of the curtilage of their residence."

See also a former opinion of this department, opinions of the attorney general for 1919, Vol. II, p. 1439, the syllabus of which is as follows:

"Distance from the residence of pupils to the school house to which they are assigned must be measured over the nearest traveled public highway, that is, the highway that is at all times practicable, convenient and accessible to such pupils, and one that can be used by vehicles of travel."

See also, opinions of the attorney general for 1921, Vol. II, p. 31, the second and third paragraphs of the syllabus of which are as follows:

"A school district receiving elementary pupils from another district because such pupils are attending their nearest school and are located more than one and one-half miles from the school to which assigned, can collect the tuition for such pupils from the district in which they reside (7735 G. C.).

"The 'notice' required by section 7735 G. C. is a notice from the board of education in (the district) which the pupils are attending to the board of education of the district in which they reside that a claim will be made for tuition, the purpose of such notice being to give the debtor board opportunity to settle the claim before the expense of suit is incurred."

Assuming that the school attended by the pupils in question in the special school district is nearer than the school to which they were assigned in the Barlow rural school district, the distance in both cases being measured over the public highway, and also subject to the provisions of section 7735 of the General Code, with reference to notice to the board of education of the district where the pupils reside, I am of the opinion that the board of education of the special school district is entitled to collect tuition from the Barlow rural school district.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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2525.

QUESTIONS CONCERNING CINCINNATI MUNICIPAL COURT ACT,  
ANSWERED.

SYLLABUS:

1. Sections 13698, 12270 and 6212-20, General Code, place a time limit for the prosecuting of error proceedings from the municipal court of Cincinnati to the common pleas court of Hamilton county, Ohio.

2. If the defendant fails to prosecute error within the time limit, the court

*should order his bond forfeited and should certify the same to the county auditor for collection by the county prosecutor.*

3. *If the defendant fails to prosecute error, the court may accept him to serve sentence without forfeiting his bond for error proceedings.*

4. *If the defendant pay his fine and costs, after filing bond for error proceedings, the court may accept same without forfeiting his bond.*

COLUMBUS, OHIO, June 1, 1925.

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

GENTLEMEN:—On May 14th I received the following communication from you:

"Stays of execution of sentences are granted and bonds are accepted by the municipal court of Cincinnati to insure the speedy prosecution of error to a higher court in criminal cases.

"The bureau finds that one, two or three years have elapsed in many instances without any action by defendants in prosecuting error and without any action by the municipal court looking toward the forfeiture or collection of such bonds.

"Question 1. Is there a legal limit of time during which prosecutions in error must be filed in the court of common pleas of Hamilton county on appeals from the municipal court of Cincinnati?

"In this connection, we are calling your attention to section 1558-26, General Code.

"Question 2. If defendant fails to prosecute such error within the legal time limit, is it the duty of the municipal court to forfeit and collect such bonds?

"Question 3. May the municipal court accept the defendant to serve sentence when he fails to prosecute error without forfeiting the appeal bond?

"Question 4. May the municipal court accept the fine and costs in such instances without forfeiting and collecting the appeal bond?"

Section 1558-26, General Code, reads:

"Proceedings in error may be taken to the court of common pleas of Hamilton county, from a final judgment or order of the municipal court of Cincinnati in the same manner and under the same conditions as provided by law for proceedings in error from the court of common pleas to the court of appeals, of Hamilton county. In civil cases in which a judgment of more than three hundred dollars has been granted, or being prayed for has not been granted, proceedings in error from a final judgment or order of the court of common pleas of Hamilton county, upon a petition in error from such final judgment or order of the municipal court to the court of common pleas of Hamilton county, may be had as in other cases originating in said court of common pleas, to the court of appeals of Hamilton county. The review of all cases other than civil actions and proceedings, shall be had in the manner provided for review of civil actions and proceedings in which a judgment for more than three hundred dollars has been granted. There shall be no appeal to the court of appeals of Hamilton county, from the court of common pleas of Hamilton county, in any action or proceedings brought on review from the municipal court of Cincinnati, to the court of common pleas of Hamilton county."

Section 12270, General Code, is as follows:

"No proceedings to reverse, vacate or modify a judgment or final order shall be commenced unless within seventy days after the entry of the judgment or final order complained of; or in case the person entitled to such proceedings is an infant, a person of unsound mind, or imprisoned, within seventy days exclusive of the time of such disability."

Section 13698, General Code, as amended in 110 Ohio laws, p. 40, reads as follows:

"When a person has been convicted of any bailable offense including the violation of an ordinance of a municipal corporation in the court of common pleas or by any magistrate, mayor or officer inferior to the court of common pleas, and gives notice in writing to the trial court or magistrate of his intention to file, or apply for leave to file, a petition in error, such court, magistrate, mayor, or other officer may suspend execution of the sentence or judgment for such fixed period as will give the accused time to prepare and file, or to apply for leave to file, a petition in error, and such suspension shall be upon condition that the accused enter into a recognizance with sureties to be approved by the court, magistrate, mayor or other officer by whom the sentence or judgment was pronounced, conditioned that the accused will prosecute such error proceedings without delay, and abide the judgment or sentence of the court."

Section 13702, General Code, reads:

"If no petition in error is filed, or leave to file a petition in error is refused, or the judgment of the trial court is affirmed, such trial court, magistrate, mayor or other officer, shall carry into execution the sentence or judgment which had been pronounced against the accused."

Section 13751, General Code, reads, in part:

"In a criminal case, including a conviction for a violation of an ordinance of a municipal corporation, the judgment or final order of a court or officer inferior to the common pleas court may be reviewed in the common pleas court; \* \* \*"

Section 1558-26, General Code, provides that the proceedings in error from the municipal court of Cincinnati shall be the same as from the common pleas court to the court of appeals of Hamilton county, Ohio.

Section 12698, General Code, provides that the court may "suspend execution of judgment \* \* \* for such *fixed period of time* as will give the accused time to prepare and file, or apply for leave to file, a petition in error \* \* \* upon condition that the accused enter into a recognizance \* \* \* conditioned that the accused will prosecute such error proceeding without delay, and abide the judgment of the court."

Section 12270, General Code, places a limit of seventy days in which to file such petition in error after judgment.

The court below may suspend sentence for any reasonable time within such seventy days that the accused has within which to file his petition in error.

Under section 6212-20 the accused must obtain leave to file within thirty days.

If the accused fails to prosecute error as provided by law within the time limit fixed by the court, the court may issue a mittimus committing him to the proper prison.

If the accused cannot be found, or his bondsmen fail to produce him, the court should order the bond forfeited in open court and same should be collected as provided by law.

See sections 13545, 13546, 13547, 13548 and 13550-1 (109 O. L. 85), General Code.

If the accused surrenders to the court to serve his sentence, or pays the fine and costs assessed, the bond for error proceedings need not be forfeited or collected.

Your questions should, therefore, be answered as follows:

1. Sections 13698, 12270 and 6212-20, General Code, place a time limit for the prosecuting of error proceedings from the municipal court of Cincinnati to the common pleas court of Hamilton county, Ohio.

2. If the defendant fails to prosecute error within the time limit, the court should order his bond forfeited and should certify same to the county auditor for collection by the county prosecutor.

3. If the defendant fails to prosecute error, the court may accept him to serve sentence without forfeiting his bond for error proceedings.

4. If the defendant pay his fine and costs, after filing bond for error proceedings, the court may accept same without forfeiting his bond.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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2526.

EFFECTIVE DATE OF FISHING LICENSE LAW—SECTION 1430 G. C.  
CONSTRUED.

SYLLABUS:

*Amended senate bill No. 4 is an act providing for a tax levy and is, therefore, within the provisions of section 1d of article 2 of the constitution of Ohio. Said act went into immediate effect upon its passage, notwithstanding the objection of the governor, on April 17, 1925.*

COLUMBUS, OHIO, June 1, 1925.

HON. CHARLES V. TRUAX, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

“Re: (Amended senate bill No. 4.) An act to amend section 1430 of the General Code, relative to fishing license.

“Your official opinion is hereby requested as to the date upon which the provisions of the above act become effective.”

Your question is whether this act is an act providing for a tax levy under section 1-D of article 2 of the constitution of Ohio, and therefore goes into immediate effect, or whether the same is subject to referendum, and therefore, not effective until ninety days after it shall have been filed in the office of the secretary of state.

Section 1430 G. C. of Ohio, as amended in amended senate bill No. 4 provides:

“Fishing License. No person shall take or catch any fish by angling with reel and rod in any of the waters of the state of Ohio, or engage in fishing with reel and rod in such waters without first having procured a li-