

2093

1. IMPRISONMENT FOR FAILURE TO PAY FINES AND COSTS ASSESSED—SECTIONS 13451-9, 13451-15 G. C. GENERAL IN NATURE—NO APPLICATION IN VIOLATION OF LAWS DEALING WITH TAKING, PROTECTION, PRESERVATION, POSSESSION OR PROPAGATION OF WILD ANIMALS.
2. DEFAULT, PAYMENT OF FINES AND COSTS ASSESSED—VIOLATION GENERAL CODE PROVISIONS DEALING WITH TAKING, PROTECTION, PRESERVATION, POSSESSION OR PROPAGATION OF WILD ANIMALS—PERSON ENTITLED TO CREDIT OF ONLY ONE DOLLAR FOR EACH DAY CONFINED IN COUNTY JAIL OR WORKHOUSE BECAUSE OF SUCH DEFAULT.

SYLLABUS:

1. The provisions of Sections 13451-9 and 13451-15, General Code, relating to imprisonment for failure to pay fines and costs assessed, are general in their nature and do not have application in violations of the laws dealing with the taking, protection, preservation, possession or propagation of wild animals.

2. A person who is in default of payment of fine and costs assessed against him by reason of his having been convicted for violating the provisions of the General Code relating to the taking, protection, preservation, possession or propagation of wild animals, is entitled to a credit of only one dollar for each day he is confined in a county jail or workhouse because of such default.

Columbus, Ohio, August 4, 1947

Hon. Leon McCarty, Prosecuting Attorney, Morrow County
Mt. Gilead, Ohio

Dear Sir:

I am in receipt of your communication which reads:

"There are several statutes governing the amount of credit which a prisoner should have if he is unable to pay his fine. General Code 1454 provides that the prisoner shall be credited with only \$1.00 per day, while several other sections under the General Code provide for a credit of \$3.00 per day. The general sections have been passed since the effective date of 1454.

"We would appreciate knowing which section we are to follow."

The General Code of Ohio contains the following provisions relative to the credit to be allowed a prisoner for each day's imprisonment:

Section 3666.

"The council may provide that any person who refuses or neglects to pay the fine imposed on conviction of any such offense, and the costs of prosecution, shall be imprisoned and kept at hard labor 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 three dollars per day for each day's imprisonment."

Section 13451-9.

"When a fine is the whole or a part of a sentence, the court or magistrate may order that the person sentenced remain 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 three dollars per day for each day's imprisonment; provided that no commitment under this section shall exceed six months, and this section shall not affect the laws relating to workhouses."

Section 13451-15.

"In cases where a fine may be imposed in whole or in part, in punishment of a misdemeanor including the violation of an ordinance of a municipality and such judge or magistrate has au-

thority to order that such person stand committed to the jail of the county or municipality until the fine and costs are paid, the court may order that such person stand committed to such jail or workhouse 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 three dollars per day for each day's imprisonment."

The above sections amended previously existing sections and were all a part of the same act passed by the Ninety-fifth General Assembly. They became effective August 27, 1943. These sections are applicable generally to either felonies or misdemeanors or to violations of a municipal ordinance where a fine is a part of the penalty.

As pointed out in your letter the general provisions above quoted were enacted subsequent to the specific provision found in Section 1454, General Code. This latter mentioned section is found in the chapter of the General Code relating to the Division of Conservation and Natural Resources and provides the penalties only for violation of the fish and game laws. This section, as last amended, became effective on August 21, 1941 and provides in part:

"Whoever violates the provisions of Section 1437 of the General Code shall be fined not less than ten dollars and the costs of prosecution nor more than fifteen dollars in addition to such costs. For each subsequent offense under such section he shall be fined not less than fifteen dollars and costs of prosecution nor more than fifty dollars in addition to such costs. Whoever violates any of the provisions of Sections 1414-1, 1415 or 1442 of the General Code, shall be fined not less than one hundred dollars nor more than five hundred dollars in addition to the costs of prosecution in each case. Whoever violates the provisions of Section 1414 of the General Code shall be fined not less than ten dollars nor more than one hundred dollars in addition to the costs of prosecution. Whoever violates any of the other provisions of the General Code relative to the taking, protection, preservation, possession or propagation of wild animals, or the use or possession of unlawful devices for such taking, or who violates any commission order then in effect shall be fined not less than fifteen dollars nor more than two hundred dollars in addition to costs of prosecution. Upon default of payment of fine and costs assessed for such violation, the offender shall be committed to the jail of the county in which the offense was committed or to some workhouse, and there be confined one day for each dollar of fine and costs assessed, and he shall not be discharged, paroled or released

therefrom by any board or officers, except on payment of the fine and costs or that part of the fine and costs remaining unpaid, except upon the order of the commissioner. * * *

It is a general rule that the terms of a special statute prevail over those of a general statute. As stated in 37 O. Jur. at page 315:

“The term ‘special statute’ is occasionally used to designate a specific statute—that is, a statute passed for a particular, as distinguished from a general, purpose or covering a particular subject-matter. In this sense, a general statute is one which covers the same and other subjects in general terms.”

In the case of *State, ex rel. Elliott Co. v. Connor*, 123 O.S., 310, the rule is stated in the first branch of the syllabus as follows:

“Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions.”

Also at page 314 of the opinion in this case is found the following statement by Marshall, C. J.:

* * * The authorities are therefore quite uniform that special provisions, and more especially those which are enacted later than general provisions, must control. The case most nearly parallel is *State, ex rel. Steller v. Zangerle*, Aud., 100 Ohio St., 414, 126 N.E., 413. The first paragraph of the *per curiam* opinion states:

‘A special statute covering a particular subject-matter must be read as an exception to a statute covering the same and other subjects in general terms.’

“The same principal has been applied in numerous other decisions of this court, among which may be mentioned *Flury v. Central Publishing House of Reformed Church of U.S.*, 118 Ohio St., 154, 160 N.E., 679; *Perkins v. Bright*, 109 Ohio St., 14, 141 N.E., 689, and *Northwestern Ohio Natural Gas Co. v. City of Tiffin*, 59 Ohio St., 420, 54 N.E., 77. This principle is so well settled that further citation of authority is unnecessary. * * *

In the case of *Dallman v. Campbell*, 56 O. App., 88, the Court of Appeals of Hamilton County had under consideration a similar question and Matthews, J. stated in the opinion at page 90:

“One rule of statutory construction applicable to these two

sections is that a statute relating to a specific subject controls a general statute which includes the specific subject in the generality of its terms. *Glassell Development Co. v. Citizens National Bank of Los Angeles*, 191 Cal., 375, 216 P., 1012, 28 A.L.R., 1427; 25 Ruling Case Law, 929. Of course, the applicability of this rule is not dependent in any way on the time of the enactment of such statutes. *State v. Preston*, 103 Ore., 631, 206 P., 304, 23 A.L.R., 414. * * *

Also in *Sutherland Statutory Construction*, 3rd Edition, Vol. 2, beginning at page 541, I find the following statement which is supported by numerous citations in the footnotes:

“* * * Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, the latter will prevail, regardless of whether it was passed prior to the general statute, * * *”

Therefore, in view of the foregoing, and in specific answer to your question you are advised that the provisions of Sections 13451-9 and 13451-15, General Code, relating to imprisonment for failure to pay fines and costs assessed, are general in their nature and do not have application in violations of the laws dealing with the taking, protection, preservation, possession or propagation of wild animals.

A person who is in default of payment of fine and costs assessed against him by reason of his having been convicted for violating the provisions of the General Code relating to the taking, protection, preservation, possession or propagation of wild animals, is entitled to a credit of only one dollar for each day he is confined in a county jail or workhouse because of such default.

Respectfully,

HUGH S. JENKINS,
Attorney General.