

5. Appointments of persons to perform the duties of county coroners during the time of such coroner's absence from the county, or inability from sickness or other causes to discharge the duties of his office, continue only for the period of such disability, and if after such disability the duly elected and qualified coroner resumes the duties of his office and again becomes temporarily disabled to perform the duties of his office, or is absent from the county, another appointment should be made, and such appointee is required to qualify for the performance of the duties incident to such appointment by giving bond and taking oath of office, even though he be the same person that had previously been appointed to fill a temporary vacancy in the same position and had previously given a bond and taken an oath of office.

6. County coroners have no authority to conduct post-mortem examinations in their official capacity at the instance of the friends or relatives of a deceased person, and therefore can not as coroner accept fees from the friends or relatives of a deceased person for the conducting of post-mortem examinations. There is nothing in the law to prevent the person occupying the position of coroner, from performing an autopsy in his private capacity and receiving pay therefor, which he may retain, providing he complies with the law and rules of the board of health respecting the disintering of human bodies, and provided he in no wise makes use of his official powers as coroner.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1195.

APPROVAL, BONDS OF AMANDA TOWNSHIP, HANCOCK COUNTY—
\$4,550.00.

COLUMBUS, OHIO, October 24, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1196.

INSOLVENT DEBTORS' ACT—APPLICATION BY PERSON IMPRISONED
FOR PERIOD OF SIXTY DAYS FOR NONPAYMENT OF FINES—CON-
CURRENT SENTENCES.

SYLLABUS:

1. *An insolvent person who has been sentenced to pay a fine and ordered to remain imprisoned in jail until such fine and the costs be paid, or secured to be paid, or until he is otherwise legally discharged, and who is imprisoned in a county jail under such sentence is entitled to the benefit of the insolvent debtors' act (Sections 11146, et seq., General Code), after such prisoner has been imprisoned thereunder for the period of sixty days.*

2. *Such a person having been imprisoned for a period of sixty days upon compliance with the provisions of Sections 11146, et seq., General Code, is entitled to be discharged, notwithstanding the fact that two or more fines had been imposed upon him and the judgments imposing such fines had specifically stated that the defendant was to be imprisoned until each of such fines was paid and that, in default of payment "imprisonment for payment of the two fines was to be separate and not concurrent."*

COLUMBUS, OHIO, October 24, 1927.

HON. CHARLES B. COOK, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR.—This will acknowledge receipt of your letter dated October 6, 1927, wherein you request that this office furnish you with an opinion relative to certain questions contained in a letter dated September 21, 1927, written to this office by the Commissioner of Insolvents of Ashtabula County, which letter reads as follows:

"A question has arisen under Section No. 11150, G. C., entitled 'Who entitled to benefits of preceding sections', upon which I should like to secure a ruling from your office.

The question is as follows: A prisoner who has been confined in the county jail for more than sixty days for non-payment of a fine imposed for the manufacturing of intoxicating liquors has filed his application with me as Commissioner of Insolvents, of Ashtabula County for discharge under said section.

It has developed that at the time he was fined for manufacturing of intoxicating liquors a fine was also imposed for transporting intoxicating liquors. Under the judgment of the court imprisonment for payment of these two fines was to be separate and not concurrent.

Question: Having served sixty days for the non-payment of one of the fines; having filed application for discharge under above section and having listed among his debts both of the fines; is he now entitled to a discharge; the certificate showing both fines and exemption from further imprisonment for the non-payment of same? In other words should a man be imprisoned for sixty days for the non-payment of each of several fines or can he only be imprisoned sixty days in all where there are several fines imposed?"

The question that you present involves consideration of Sections 11146, et seq., of the General Code. It will be noted that Section 11150, General Code, provides that the benefit of the insolvency statutes shall be applied to persons who are imprisoned under process for a fine, penalty or costs, in a criminal proceeding after such person has been imprisoned thereunder for a period of sixty days, unless the judgment in the case requires imprisonment until the fine, penalty or costs, be paid.

You state that the prisoner in question "has been confined in the county jail for more than sixty days for non-payment of a fine imposed for the manufacturing of intoxicating liquors," and that he was also fined for unlawfully transporting intoxicating liquors.

You further state that the judgment of the court was to the effect that in the event the fines imposed were not paid the "imprisonment for payment of these two fines was to be separate and not concurrent." Authority to impose concurrent or consecutive sentences exists only in those cases where imprisonment is the punishment imposed or a part thereof. No authority in law exists which would warrant the Commissioner of Insolvents to consider the prisoner in question as serving consecutive

sentences in lieu of non-payment of the two fines imposed. The prisoner in question is confined in jail under process for a fine and costs in a criminal case and is suffering imprisonment for no other reason except insolvency.

Your attention is directed to Section 11148, General Code, which provides:

"When a person, resident in this state or not, is arrested, or in custody of a sheriff, or other officer, on mesne or final process, in a civil action, the officer having such person in custody, if requested by him, shall go with such person before the commissioner of insolvents of the county where he is arrested, or in custody, who shall, if required, make out for such person, under his direction, an accurate schedule in writing of all debts by him owing, specifying the names of the persons to whom owed, and the original consideration thereof, and whether they are by bond, note, or otherwise. Also, an accurate schedule in writing of all debts and demands owing to him, with a pertinent description of all contracts in which he is interested, and of all property, of every kind, real and personal, in possession, remainder, or reversion, to which he has any claim. Such applicant must surrender to the commissioner all written evidences of title and of claims and his books of account."

By the terms of this section the applicant is required to make out an accurate schedule of "all debts by him owing." In such schedule he would list, *inter alia*, the two fines imposed or "debts" due and owing by him to the state.

In this connection your attention is directed to the case of *Kohler vs. The State, ex rel. Goldstein*, 24 Ohio Appellate, -----; Vol. XXV, the Ohio Law Bulletin and Reporter, September 12, 1927, at page 233, (Motion for an order directing the Court of Appeals of Cuyahoga County to certify the record was over-ruled by the Supreme Court). Goldstein was arrested and charged with a violation of Section 6212-17 of the General Code. Upon trial being had he was found guilty and fined five hundred dollars and costs. He was unable to pay the fine and was committed to the county jail, the journal entry reading as follows:

"That the said Joe Goldstein was tried and found guilty by me for violating the liquor law and to pay a fine of \$500.00 and costs and to be imprisoned in the jail of said county until the fine and costs are paid, or secured to be paid, or until he be otherwise discharged according to law."

Goldstein served in the county jail more than sixty days. He was insolvent and complied with the rules regulating the assignment of property and with the provisions of Sections 11148 to 11150, General Code. He was given a certificate of discharge by the commissioner of insolvents and ordered released from the custody of the sheriff. The sheriff refused to discharge him. Thereupon a mandamus action was filed praying for the release of the defendant which was granted by the Court of Common Pleas. On error proceedings the Court of Appeals affirmed the judgment of the lower court.

In the opinion of the Court of Appeals, Judge Sullivan used the following language:

"It is argued that the principle of imprisonment for debt does not apply to the instant case, for the reason that the fine and costs may be discharged by a credit allowance given the prisoner, which in time would release him by its full payment in that manner. Under the circumstances such as these, however, it is obvious that the insolvent debtor for that reason alone would

suffer a period of imprisonment for no other reason except insolvency, which, for the offense committed, would under the Constitution and laws be excessive in its character. It cannot be denied, however, that such a situation vitally partakes of that obnoxious doctrine that compels a person to suffer imprisonment in the county jail for debt, which has been practically swept from our law.

It is claimed by the state that the fine and costs imposed in the case at bar are penalties, and not an indebtedness, but this interpretation, we think, does violence to Section 11150, General Code, where it makes clear that the language of the section is applicable to 'a person who is imprisoned under process for a fine, penalty, or costs, in a criminal proceeding.' "

In view of the foregoing and answering your question specifically it is my opinion that an insolvent person, who has been sentenced to pay a fine and ordered to remain imprisoned in jail until such fine and the costs be paid or secured to be paid, or until he be otherwise legally discharged, and who is imprisoned in a county jail under such sentence, is entitled to the benefit of the insolvent debtor's law (Section 11146 et seq., General Code) after such prisoner has been imprisoned thereunder for a period of sixty days.

It is further my opinion that such a person having been imprisoned for a period of sixty days upon compliance with the provisions of Sections 11146 et seq., General Code, is entitled to be discharged, notwithstanding the fact that two or more fines had been imposed upon him and the judgments imposing such fines had specifically stated that the defendant was to be imprisoned until each of such fines was paid and that, in default of payment, "imprisonment for payment of the two fines was to be separate and not concurrent."

Respectfully,

EDWARD C. TURNER,

Attorney General.

1197.

APPROVAL, BONDS OF MONROE TOWNSHIP RURAL SCHOOL DISTRICT,
PICKAWAY COUNTY, OHIO—\$2,800.00.

COLUMBUS, OHIO, October 26, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

1198.

APPROVAL, BONDS OF THE VILLAGE OF LOUISVILLE, STARK COUNTY
—\$8,000.00.

COLUMBUS, OHIO, October 26, 1927.

Industrial Commission of Ohio, Columbus, Ohio.