

2088.

MUNICIPAL COURT OF TOLEDO—AUTHORITY UNDER CRABBE ACT
DISCUSSED—REMISSION OF FINES—SUSPENSION OF SENTENCES
—MOTIONS FOR CONTINUANCE.

SYLLABUS:

1. *By the terms of Section 6212-17, General Code, the Municipal Court of Toledo is without authority to remit any fine or part thereof imposed in cases involving violations of the Crabbe Act and such court is without authority to suspend in whole or in part any sentence imposed in such cases.*

2. *By the terms of Section 13706, General Code, the Municipal Court of Toledo is without authority to suspend the imposition of sentence and place a defendant on probation in cases charging a violation of the Crabbe Act (Sections 6212-13 to 6212-20, General Code), where the defendant has pleaded or been found guilty.*

3. *The granting or refusing of motions for continuance are matters within the sound discretion of the trial court.*

4. *If a court of competent jurisdiction should arbitrarily refuse to hear a case which either or both parties desire to be heard, such court may, by an action in procedendo, be compelled to proceed with such hearing and to adjudicate the rights of the litigants.*

COLUMBUS, OHIO, May 12, 1928.

HON. B. F. McDONALD, *Prohibition Commissioner, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter dated May 7, 1928, which reads:

“The Municipal Judges in the city of Toledo have been following the practice of marking cases which charge violation of the Crabbe Law in the following manner, to-wit: ‘Guilty no sentence.’ ‘Continued generally.’ ‘Off docket.’

When questioned as to their authority for such disposition of such cases, they said to me that was the general practice with all of the Municipal Judges in that city, and that attorneys practicing in those courts in that city claim such a right.

I am asking for your opinion regarding such practice.”

Section 6212-18, General Code, provides:

“Any justice of the peace, mayor, municipal or police judge, probate or common pleas judge within the county with whom the affidavit is filed charging a violation of any of the provisions of this act (G. C., Secs. 6212-13 to 6212-20), when the offense is alleged to have been committed in the county in which such mayor, justice of the peace, or judge may be sitting, shall have final jurisdiction to try such cases upon such affidavits without a jury, unless imprisonment is a part of the penalty, but error may be prosecuted to the judgment of such mayor, justice of the peace, or judge as herein provided. And in any such cases where imprisonment is not a part of the penalty, the defendant cannot waive examination nor can said mayor, justice of the peace, or judge recognize such defendant to the grand jury; nor shall it be necessary that any information be filed by the prosecuting attorney or any indictment be found by the grand jury. The officers named herein shall

have authority to issue search warrants as provided for in Section 6212-6 of the General Code, and the jurisdiction granted herein shall be coextensive with the county, whether or not within the county there is a municipality having a municipal court."

Section 6212-17, General Code, reads in part as follows:

"* * * No fine or part thereof imposed hereunder shall be remitted nor shall any sentence imposed hereunder be suspended in whole or in part thereof."

Section 13706, General Code, which provides for the suspension of imposition of sentence in criminal cases wherein a defendant has pleaded or been found guilty expressly excepts therefrom prosecutions mentioned in Section 6212-17, General Code, this section providing:

"In prosecutions for crime, *except as mentioned in Section 6212-17 of the General Code*, and as hereinafter provided, where the defendant has pleaded or been found guilty and it appears to the satisfaction of the court or magistrate that the character of the defendant and the circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and that the public good does not demand or require that he shall be immediately sentenced, such court or magistrate may suspend the imposition of the sentence and place the defendant on probation in the manner provided by law, and upon such terms and conditions as such court or magistrate shall determine." (Italics the writer's.)

I know of no authority of law which would permit a court, in cases charging a violation of the Crabbe Act, to enter judgment "guilty no sentence." Section 6212-17, General Code, fixes the penalties for the several violations of law enumerated in the Crabbe Act and provides that, upon a judgment of "guilty" of any offense under such law, the trial court has no alternative other than to impose sentence as therein provided. The procedure in municipal courts in this class of cases is governed by Sections 13506 to 13513, both inclusive, of the General Code.

With reference to the power of the court in question to continue cases, your attention is directed to the following quotation from 13 Corpus Juris, page 123:

"The power to grant or to refuse continuance is inherent in all courts, and necessary for the promotion of justice and the prevention of delay. * * * It is a general rule that the granting or refusing of a motion for continuance is in the sound discretion of the trial court; and that an appellate court will not interfere with the exercise of this discretion unless the action of the trial court is plainly erroneous and a clear abuse of its discretion. However, the discretion of the trial court in this respect is not an arbitrary but a judicial discretion, governed and controlled by legal rules, and to be exercised with a view to the manifest rights of the parties and the prevention of injustice and oppression, and in this sense it is subject to revision."

At page 126 of the same authority it is said:

"Continuances of causes are not favored by the courts, and when granted, the grounds alleged must be such that the court may clearly see that a postponement of the cause will result in a furtherance of justice. It is difficult

to lay down any general rule. The right to obtain a continuance is frequently very much abused, and it is proper that courts should be vigilant in preventing such abuse; while, on the other hand, it is important that the fair exercise of the right should not be denied, because it is of the first importance to the correct administration of justice. In other words, while it is the duty of the court to prevent unnecessary delay in the trial of causes, yet it should not prejudice the substantial rights of parties by forcing them to trial when they cannot reasonably be expected to do full and complete justice to their case. It has been the policy of the courts always to deny an application for a continuance when a delay of the cause would be unnecessary and could effect no beneficial result. And it is a general rule that, where the circumstances attending the application raise just doubts as to the bona fides of the party making it, or convince the court that it is made for delay merely, the continuance properly may be denied."

It is probably unnecessary to point out that cases may arise wherein it becomes necessary, in order that further testimony be obtained, to continue the hearing. Material witnesses may be absent from the jurisdiction of the court or may fail to appear. Under such or other proper circumstances reasonable continuances often are granted in furtherance of justice. Whether or not a continuance be granted is a matter vested in the sound discretion of the trial court.

Where a court has continued a case either party may of course file a motion asking such case to be set down for hearing. And if a court of competent jurisdiction should arbitrarily refuse to hear a case, which either or both parties desire to be heard, such court may, by an action in *procedendo* in the Supreme Court or Court of Appeals, be compelled to proceed with such hearing and to adjudicate the rights of the litigants.

Although the words "off docket" may have a peculiar local meaning, I assume what is meant is that such cases are temporarily taken off the active trial list but remain on the docket as pending cases, subject to being restored to the active trial list at any time. I do not have sufficient facts before me to give my opinion as to such practice. If, however, I be correct in my assumption, a motion may be filed asking that the case be restored to the docket and the procedure outlined in the preceding paragraph may be followed.

Summarizing, it is my opinion that with reference to affidavits filed in the Municipal Court of Toledo, charging violations of the Crabbe Act, the practice and procedure in such court is no different than in other municipal courts throughout the state. The general rules of law apply and it is, of course, the duty of the judges of such court to comply therewith.

By the terms of Section 6212-17, General Code, the Municipal Court of Toledo is without authority to remit any fine or part thereof imposed in cases involving violations of the Crabbe Act and such court is without authority to suspend in whole or in part any sentence imposed in such case.

By the terms of Section 13706, General Code, the Municipal Court of Toledo is without authority to suspend the imposition of sentence and place a defendant on probation in cases charging a violation of the Crabbe Act where the defendant has pleaded or been found guilty.

The granting or refusing of motions for continuance are matters within the sound discretion of the trial court.

If a court of competent jurisdiction should arbitrarily refuse to hear a case which either or both parties desire to be heard, such court may, by an action in *procedendo*, be compelled to proceed with such hearing and to adjudicate the rights of the litigants.

Respectfully,

EDWARD C. TURNER,

Attorney General.

2089.

COUNCIL—CITY OF MANSFIELD—NO AUTHORITY TO PROVIDE ALLOWANCE FOR AUTO BELONGING TO BAILIFF OF MUNICIPAL COURT.

SYLLABUS:

The council of the city of Mansfield may not legally provide that an allowance of a specified sum per annum be paid to the bailiff of the municipal court of the city of Mansfield for the use of his automobile, in addition to the maximum salary prescribed by statute.

COLUMBUS, OHIO, May 12, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication requesting my opinion, as follows:

“Section 1579-1017, G. C., 112 O. L. 335, reads:

‘The bailiff shall be appointed by the judge of the municipal court, and hold office during the pleasure of the court. He shall perform for the municipal court, services similar to those usually performed by the sheriff of courts of common pleas, and by the constable of courts of justices of the peace. Such bailiff shall receive such compensation, nine hundred dollars per annum, payable out of the treasury of the city of Mansfield, in monthly installments, as the council may prescribe. Before entering upon his duties, said bailiff shall make and file in the office of the auditor of the city of Mansfield, a bond in such sum of not less than two thousand dollars (\$2,000.00) as council may prescribe. The terms and conditions of said bond shall be subject to the approval of the judge of the court. The said bond shall be given to the state of Ohio and shall be for the benefit of the city of Mansfield and township of Madison and of any person who shall suffer any loss by reason of a default in any of the conditions of said bond. Every police officer of the city of Mansfield shall be ex-officio deputy bailiff of the municipal court and shall perform from time to time such duties in respect to cases within the jurisdiction of said court as may be required of them by said court to the clerk thereof.’

QUESTION: May the council of the city of Mansfield legally provide that an allowance of \$300.00 per annum for the use of his automobile be paid to the bailiff of the municipal court in addition to his salary of \$900.00 per annum?”

The Municipal Court of Mansfield, Ohio, was created by the 87th General Assembly in an act passed on April 21, 1927, entitled, “An Act—To provide for the estab-