

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

of the view of the examiner that the several officers named have been in receipt of payment of moneys for their public services in excess of the limitation named in the three following sections of the General Code:

"Section 3308. The clerk shall be entitled to the following fees, to be paid by the parties requiring the service; twenty-five cents for recording each mark or brand; ten cents for each hundred words of record required in the establishment of township roads, to be opened and repaired by the parties; ten cents for each hundred words of records or copies in matters relating to partition fences, but not less than twenty-five cents for any one copy, to be paid from the township treasury; ten cents for each hundred words of record required in the establishment of township roads, to be opened and kept in repair by the superintendents; for keeping the record of the proceedings of the trustees, stating and making copies of accounts and settlements, attending suits for and against the township, and for any other township business the trustees require him to perform, such reasonable compensation as they allow. In no one year shall he be entitled to receive from the township treasury more than two hundred and fifty dollars."

"Section 3318. The treasurer shall be allowed and may retain as his fees for receiving, safe keeping and paying out moneys belonging to the township treasury, two per cent of all moneys paid out by him upon the order of the township trustees, but in no one year shall he be entitled to receive from the township treasury more than one hundred and fifty dollars, except that in a township wherein a city is located and such city is a part of such township, a township treasurer shall be entitled to receive from the township treasury not more than three hundred dollars in one year."

"Section 3294. Each trustee shall be entitled to one dollar and fifty cents for each day of service in the discharge of his duties in relation to partition fences, to be paid in equal proportions by the parties, and two dollars and fifty cents for each day of service in the business of the township, to be paid from the township treasury. The compensation of any trustee to be paid from the treasury shall not exceed two hundred and fifty dollars in any year including services in connection with the poor. Each trustee shall present an itemized statement of his account for such per diem and services, which shall be filed with the clerk of the township, and by him preserved for inspection by any persons interested."

It is to be said that the maximum annual compensation as indicated in these several sections was increased by the General Assembly during the period covered by the examiner's report; but this increase does not affect the principle upon which the examiner proceeded. In other words, the aggregate of the findings as above set out was arrived at by the examiner through the process of adding all payments shown to have been received by each of the several officers during the period in question and then deducting from the sum so arrived at the maximum annual compensation allowable under the statutes quoted for each of the several years covered by the report.

The examiner in his report does not raise any question as to the intrinsic correctness of the individual items. Hence, for the purposes of this opinion it will be assumed without passing upon the point that there was legal warrant for the

drawing of each item, provided that the limitation upon the maximum annual compensation does not operate to make such drawing illegal.

The examiner's report shows that the extra compensation as returned by the examiner grew out of services of the several officers in connection with ditches, roads and partition fences. In the case of the clerk, there are entries in the report showing services on fourteen ditches, which ditches, according to your letter of January 5, 1921, are all township ditches, thirteen being single township ditches and the remaining one being a joint township ditch. There are also entries as to the clerk showing services on roads, and in one instance, on a partition fence. Likewise, in the case of the treasurer, there are entries in the report showing services on four township ditches and two roads. In the case of the three trustees, the excess compensation as reported by the examiner also has reference to services on township ditches.

In all three of the statutes above quoted, the outstanding feature, in so far as limitation on annual compensation is concerned, is that such limitation is not absolute, but has reference merely to the amount that may be drawn *from the township treasury*. This fact makes particularly pertinent the observation of Judge Rockel in his latest work on Township Officers, wherein, after quoting section 3294 G. C., he says:

"The limitation of \$250.00 per year applies to all services rendered for the township where the payment is to be made from the township treasury. In cases where the services are rendered for the interest of private individuals and are to be paid for by the individuals, such as partition fence controversies, such services would not be included in the \$250.00 limitation, and the same might be true in ditch proceedings where the costs are taxed to and are paid by certain individuals, and are not paid by the public treasury."

(Rockel Complete Guide for Township Officers, 17 Ed. Sec. 1375, p. 1068).

Of course, it is clear that what Judge Rockel has said as to section 3294 relating to township trustees has equal force when applied to section 3308 relating to township clerk, and section 3318 relating to township treasurer.

It is the opinion of this department that the rule suggested by Judge Rockel is correct. It must be borne in mind that township officers, unlike county officers, are not compensated on a salary basis, but on the basis of fees and allowances. The limitation on annual compensation does not entrench upon the fee and allowance system except to the extent of providing a limitation upon the total amount of fees drawn annually from the township as such.

It is believed that the conclusion just stated is not out of harmony with that reached in a previous opinion (No. 934) of this department rendered to your predecessor under date January 13, 1920, wherein the third conclusion stated was to the effect that the limitation on annual compensation named in section 3318 applied to the two per cent to which the township treasurer was entitled for paying out moneys for township improvements under sections 3298-1 to 3298-15n. While it is true that part of the moneys paid out by the treasurer on improvements under said last-named sections are derived from assessment against benefited lands, yet as was pointed out in said opinion, the only basis for the drawing of the two per cent by the treasurer, so far as the assessment share was concerned, was that such latter share be treated "as money belonging to the township treasury;" and of course if treated as belonging to the township treasury for one purpose named in section 3318, namely, the allowance of the two per cent, it could not be treated for another purpose, namely, avoiding the annual compensation limitation, as not belonging to the township treasury.

The general rule above stated will, it is thought, furnish you the principle to be applied in acting upon the report of the examiner. In other words, you will consider each item of payment in connection with the statutes bearing upon the service out of which such item grows; and if you find that under such statutes an item is payable by an individual and is not a charge upon the township treasury, you will eliminate such item from the findings as made by the examiner. As already intimated, it is not within the province of this opinion to state a conclusion respecting the intrinsic legality of each individual item.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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1824.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN  
 HAMILTON, ERIE, HIGHLAND AND CLARK COUNTIES, OHIO.

COLUMBUS, OHIO, January 27, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

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1825.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENTS IN  
 WILLIAMS COUNTY, OHIO.

COLUMBUS, OHIO, January 27, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

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1826.

APPROVAL, BONDS OF OREVILLE RURAL SCHOOL DISTRICT IN  
 AMOUNT OF \$25,000.

COLUMBUS, OHIO, January 27, 1921.

*Industrial Commission of Ohio, Columbus, Ohio.*

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1827.

APPROVAL, DEFICIENCY BONDS OF VILLAGE OF NEW LEXINGTON,  
 OHIO, IN AMOUNT OF \$20,000.

COLUMBUS, OHIO, January 29, 1921.

*Industrial Commission of Ohio, Columbus, Ohio.*