

sentence "at any time before such sentence is carried into execution." You will note that there is no such limitation in the sections of the Criminal Code which now make provision for the suspension of the imposition of sentences.

In view of the foregoing, including the Ohio authorities cited, and especially since the Murray case, upon which Opinion No. 2657 was grounded, was expressly explained and modified by the Supreme Court of the United States in the Benz case, supra, I feel constrained to modify the 1928 opinion to the extent that it conflicts with the Benz decision. And, in specific answer to your question, it is my opinion that:

1. Trial courts in Ohio have the power and jurisdiction during term to vacate a judgment and sentence in a criminal case, and to resentence so as to decrease but not augment the punishment, even though the accused shall have commenced to serve his original sentence in the Ohio Penitentiary or the Ohio State Reformatory.

2. This power and jurisdiction includes the power *during term* entirely to vacate the judgment and sentence once pronounced, and to suspend the imposition of a new sentence and place the accused upon probation in accordance with the provisions of Sections 13452-1, et seq., General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1627.

CONTRACT—STATE WITH THE OHIO STATE CONSTRUCTION COMPANY, GENERAL AND ELECTRIC CONTRACTS, DEFIANCE COUNTY HIGHWAY GARAGE, DEFIANCE.

COLUMBUS, OHIO, December 30, 1939.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a contract by and between the state of Ohio acting through you as director of the department of public works for the department of highways, and The Ohio State Construction Company of Columbus, Ohio, for the construction and completion of contract for general work for a project known as revised September 1, 1939 (general and electrical contracts only), Defiance County Highway Garage, Defiance, Ohio, as set forth in Item 1, general contract for Defiance County Highway Garage of the form of proposal dated November 13, 1939, all according to plans and speci-

cations, which plans, specifications and proposal are made a part of this contract. This contract calls for an expenditure of \$19,660.00.

You have submitted the following papers and documents in this connection: Division of contract; notice to bidders; proof of publication; estimate of cost; tabulation of bids; contract encumbrance record No. 28; controlling board's release; recommendation of state architect; form of proposal containing the contract bond signed by Glen Falls Indemnity Company of New York, as surety; its power of attorney for the signer and its certificate of compliance with the insurance laws of Ohio; workmen's compensation certificate, showing a compliance with the laws of Ohio relating to workmen's compensation; letter from the auditor of state showing that all necessary papers are on file in his office.

Finding said contract in proper legal form, I have noted my approval thereon, and same is transmitted herewith to you, together with all other papers submitted in this connection.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1628.

BONDS—CITY OF CLEVELAND, \$193,000.00.

COLUMBUS, OHIO, December 30, 1939.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of the City of Cleveland, \$193,000.00.

The above purchase of bonds appears to be part of a \$1,500,000 issue of delinquent tax bonds of the above city dated December 31, 1938. The transcript relative to this issue was approved by this office in an opinion rendered to the State Teachers Retirement Board under date of August 1, 1939, being Opinion No. 974.

It is accordingly my opinion that these bonds constitute valid and legal obligations of said city.

Respectfully,

THOMAS J. HERBERT,
Attorney General.