

which have not as yet been specifically repealed. As to those matters in the latter sections not specifically covered by Amended Senate Bill 284, it is your duty to charge the fees provided in Sections 8728-1 to 8728-10, inclusive, until the effective date of the repeal thereof.

Respectfully,
EDWARD C. TURNER,
Attorney General.

478.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN CARROLL, CLERMONT, COLUMBIANA, LOGAN, MEIGS, PORTAGE AND TRUMBULL COUNTIES.

COLUMBUS, OHIO, May 11, 1927.

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

479.

FAILURE TO PROVIDE—CONVICTION UNDER SECTION 13008, GENERAL CODE—FORFEITURE OF BOND—DISPOSITION OF BOND.

SYLLABUS:

Where a parent, convicted of failure to provide his or her minor children with the necessary or proper home, care, food or clothing in violation of Section 13008, General Code, after conviction and before sentence, enters into a bond to the State of Ohio, conditioned as provided in Section 13010, General Code, and the conditions of said bond are broken and the same is forfeited, the proceeds collected under such forfeiture should be paid to the trustee appointed by the court under the provisions of Section 13010, and should be expended under the court's direction by such trustee, for the maintenance of the children of such parent under sixteen years of age.

COLUMBUS, OHIO, May 11, 1927.

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

GENTLEMEN:—I am in receipt of your communication, requesting my opinion in answer to the following question:

"A father is charged with non-support of his children, the affidavit being filed under Section 13008 of the General Code. After conviction he is permitted to give bond in a sum fixed by the Court at not less than \$500.00 as provided by Section 13010 G. C. If the condition of his bond is not met and the same is forfeited and the sureties of the bond pay the amount into court, what disposition should be made of the money thus collected."

Sections 13008 and 13010, General Code, read as follows:

"Sec. 13008. Whoever, being the father, or when charged by law with the maintenance thereof, the mother, of a legitimate or illegitimate child under sixteen years of age, or the husband of a pregnant woman, living in this state, fails, neglects or refuses to provide such child or such woman with the necessary or proper home, care, food and clothing, shall be imprisoned in a jail or workhouse at hard labor not less than six months nor more than one year, or in the penitentiary not less than one year nor more than three years."

"Sec. 13010. If a person, after conviction under either of the next two preceding sections and before sentence thereunder, appears before the court in which such conviction took place and enters into bond to the state of Ohio in a sum fixed by the court not less than five hundred dollars nor more than one thousand dollars, with sureties approved by such court, conditioned that such person will furnish such child or woman with necessary and proper home, care, food and clothing, or will pay promptly each week for such purpose to a trustee named by such court, a sum to be fixed by it, sentence may be suspended."

It will be observed that the provisions of Section 13008, *supra*, relate to the maintenance of both legitimate and illegitimate children under sixteen years of age, and so far as the purpose and intent of the statute are concerned, the same provisions apply to one as to the other.

Before the amendment of 1923 similar provisions were also made with reference to the care and support of illegitimate children in the chapter entitled "Bastardy" (Sections 12110, et seq., of the General Code). Comparison was made of these provisions of law insofar as they apply to the maintenance of illegitimate children, by the Supreme Court in the case of *The State of Ohio vs. Veres*, 75 O. S. 138. The court says at page 143:

"While the two acts are so designed and drawn that each provides a remedy for the enforcement of the same natural duty, namely; the support by the father of his illegitimate child * * * And the remedies they afford for the enforcement of this duty being entirely consistent with each other, the rule is well settled that the satisfaction of one is the only bar to the prosecution of the other."

The legislative history of Section 13008 shows that it was first enacted April 16, 1890 (87 O. L. 216) the title of the act being "To prevent abandonment and pauperism." As so enacted it was construed as to purpose and intent by the Supreme Court of Ohio in the case of *Bowen vs. The State*, 56 O. S. 235. The court says at page 239:

"The duty is primarily devolved on the father to support his minor children out of his property, or by his labor. Revised Statutes, Section 3110. This is a duty which he owes to the state, as well as to his children; and he has no more right to allow them to become a public charge than he has to allow them to suffer for want of proper care and sustenance. The design of the statute, under which the plaintiff in error was prosecuted, was to enforce, as far as practical, the fulfillment of the father's duty to the public;"

Concerning Sections 12110, et seq., General Code, the Supreme Court of Ohio in the case of *McKelvey vs. The State of Ohio*, 87 O. S. 1, said at page 8 of the opinion:

"The main purpose of the legislation covered by the above sections is shown by its history and the decisions of this court to be for the support of bastard children and to prevent their becoming a charge upon the public."

and held that in enacting Sections 13008, et seq., the legislature had "provided practically the same remedy to accomplish the same purpose under both acts."

The character, purpose and intent of Sections 13008, et seq., of the General Code, was considered by the Supreme Court of Ohio in the case of Seaman vs. The State of Ohio, 106 O. S. 177, wherein the court said on page 184:

"The intent of this legislation was to compel persons charged by law with the support of designated dependents to meet the full measure of their obligation to such dependents and society. The converse of the proposition may be stated that it was the purpose to relieve society of a burden that properly belonged to one charged by law with its obligation. * * *

The purpose of Section 13010, General Code, is to provide method whereby one who has been adjudged guilty of a violation of Section 13008 shall secure to the dependent the support necessary for its comfort and welfare, and thereby relieve society of the burden that it would otherwise have charged upon it."

Sections 13018 and 13019, General Code, provide in substance that when a person is convicted under Section 13008 and sentenced to either a workhouse or a penitentiary the authorities of such workhouse or penitentiary shall pay a per diem stipend to a trustee appointed by the court to be expended by such trustee for the maintenance of the child or children for whom such prisoner had failed to provide. In the course of the opinion in the case of Seaman vs. State, supra, at page 187 the court says:

"Section 13018, General Code, and Section 13019, General Code, only serve to emphasize and support the reasoning that the purpose and intent of the whole legislative scheme upon this subject was, and is, to provide those whom it is deemed necessary to protect with sufficient support to protect the public against burden. It is our opinion that the latter sections were designed to secure to the dependents a measure of support when it was found necessary, the circumstances of a case considered, to enforce the imprisonment provisions of Section 13008, General Code. The application of Sections 13018 and 13019, General Code, does not presuppose an order and bond under Section 13015, General Code. To hold otherwise, is to assume that the legislature intended to provide two sources of support, one arising under the order of the court and secured by the bond, and the other arising out of the imprisonment and the operation of Sections 13018 and 13019, General Code."

While the Supreme Court does not say so in definite language, it is inferable from the language used in the last few lines of the quotation last above set out, that its construction of the legislative scheme upon this subject is that the order of the court, as secured by the bond, is to provide a source of support for the dependents which the act seeks to protect and that proceeds of the bond when forfeited should be applied to the same use as the moneys paid under the order of the court or from the penal institution to which the defendant had been sentenced.

Similar provisions of law are found under Sections 1655, et seq., which relate

to the jurisdiction of the juvenile court in prosecutions for failure to provide necessary care and support for minors under eighteen years of age. Provision is there made for suspension of sentence upon conviction of failure to support minors under eighteen years of age, upon such conditions as the court may see fit to impose including the giving of a bond similar to that provided for in Section 13010, *supra*.

The question of the application of the proceeds of such bond upon forfeiture was passed upon by this department in an opinion dated March 24, 1927, addressed to the Hon. Wm. B. James, Prosecuting Attorney, Bowling Green, Ohio, in which it was held that:

“Where as a condition of suspension of sentence imposed upon a parent convicted of failing to support a minor child in violation of section 1655, General Code, a juvenile judge, under authority of Section 1666, General Code, requires such parent to give a bond to the state of Ohio, conditioned upon his complying with the court’s order with reference to payments for the support of the minor involved, such bond is for the benefit of the minor child and the political sub-division or taxing district which would suffer the burden of maintaining such child and upon default by the parent and collection of the bond the funds should be used for the maintenance and support of the child.”

For the reasons stated, I am of the opinion that where a parent, convicted of failure to provide his or her minor children with the necessary or proper home, care, food or clothing in violation of Section 13008, General Code, after conviction and before sentence, enters into a bond with the State of Ohio, conditioned as provided by Section 13010, General Code, and the conditions of said bond are broken and the same is forfeited, the proceeds collected under such forfeiture should be used to provide the necessary and proper home, care, food and clothing for such children, and should be expended under the court’s direction, by the trustee appointed by the court under the provisions of Section 13010, *supra*.

Respectfully,

EDWARD C. TURNER,

Attorney General.

480.

AUTOMOBILE—RIGHT TO SEARCH WITHOUT WARRANT.

SYLLABUS:

In the absence of facts upon which to base a reasonable belief that the law is being violated, no officer has the right to stop persons driving automobiles, or to search automobiles without a warrant. Where an officer has reasonable grounds to believe and does believe that liquor is being transported in violation of law, and that before a warrant could be secured the automobile would be beyond the reach of the officer with its load of illegal liquor, such officer has the right to search such automobile without warrant.

COLUMBUS, OHIO, May 12, 1927.

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

DEAR MR. McDONALD:—I am in receipt of your letter of May 7th, requesting an answer to the following question which you submit: