

was to limit them to the conferring of bachelor degrees only so far as earned degrees or degrees given on account of scholastic standing after the completion of courses of study are concerned.

It is everywhere recognized that a master's degree is a degree of somewhat higher standing than a bachelor's degree and is given only on the satisfactory completion of courses of study somewhat in advance of, and in addition to the courses of study which lead to a bachelor's degree.

I am therefore of the opinion that inasmuch as the Trustees of Kent State College are limited by statute to the establishment and presentation of courses of study leading to the degrees of bachelor of arts and bachelor of science so far as earning degrees is concerned, they are without power to establish courses of study leading to a master's degree either of arts or science or to confer such masters' degrees as earned degrees.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4107.

COURT—AUTHORIZED TO DIRECT TIME AND MANNER OF PAYMENT
OF FINE OR REMIT OR SUSPEND SENTENCE IN MISDEMEANORS
DESCRIBED IN SECTION 1454, G. C.

SYLLABUS:

Any court having jurisdiction over the misdemeanors mentioned and provided for by section 1454, General Code, may, at the time of sentence, direct the time and manner of payment of the fine, which time shall in no case exceed one year from the date of sentence, as provided by section 13451-8a of the General Code, and such court may, at the time of sentence, remit the same or suspend such sentence in whole or in part upon such terms as the court may impose, as provided by section 13451-8b of the General Code.

COLUMBUS, OHIO, MARCH 30, 1935.

HON. WILLIAM H. REINHART, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your request for an opinion, reading as follows:

“I respectfully request an opinion from your office with reference to Senate Bill No. 133, an Act to authorize courts to modify, suspend or remit sentences.

Section 1454, General Code of Ohio, vests the authority to release from confinement or parole in the Conservation Commissioner. A ruling from your office, as well as a decision from the Ohio Supreme Court makes it mandatory for the Court to impose sentence, thereby placing defendant under legal restraint until fine and costs are paid or released therefrom by an order from the Conservation Commissioner.

Senate Bill No. 133 is evidently in conflict with Section 1454 and therefore your opinion is necessary to clarify and harmonize Section 1454 and Senate Bill No. 133.”

Senate Bill No. 133, above referred to, was passed by the 90th General Assembly, section 1 of which is now section 13451-8a, General Code, reading as follows:

"Where any court is empowered or required to impose sentence of fine for any misdemeanor forbidden by statute or ordinance, such court may in its discretion, direct the time and manner of payment of such fine, which shall in no case exceed one year from date of sentence."

Section 2 of said Senate Bill No. 133 is now section 13451-8b, General Code, and reads as follows:

"Any court sentencing a person for misdemeanor forbidden by statute or ordinance, may at the time of sentence remit the same or suspend such sentence in whole or in part, upon such terms as he may impose."

Section 1454 of the General Code provides penalties for violations of the fish and game laws. In each instance it is provided that whoever violates the provisions of the fish and game laws "shall be fined." Said section contains the further provision:

"and upon default of payment of fine and costs assessed for any violation of this chapter of the General Code he shall be committed to the jail of the county or to some workhouse, and there confined one day for each dollar of the fine imposed and the costs assessed. He shall not be discharged, paroled or released therefrom by any board or officers, except upon payment of the fine and costs or that portion of the fine and costs remaining unpaid or except upon the order of the conservation commissioner."

There is also a provision requiring the revocation of any license for hunting or fishing issued to the convicted defendant.

It is now well settled in Ohio that trial courts do not have inherent power to suspend the execution of sentences in criminal cases, and it appears to be equally well settled that the courts do have such power if authorized by legislative enactment.

The following rule is found in 12 O. Jur., Section 7:

"The general assembly has assumed the responsibility of defining what acts or omissions are crimes or offenses against the state and of prescribing suitable penalties in case of guilt, and has provided its own definitions and procedure."

To the same effect is the following language found in the case of *Ex Parte Fleming*, 123 O. S., 16, at page 20:

"The legislature has power to define crimes and offenses and fix the penalties therefor."

The third paragraph of the syllabus of the case of *Municipal Court of Toledo vs The State, ex rel. Platter*, reported in 126 O. S., 103, reads:

"The trial courts of this state do not have the inherent power to suspend execution of a sentence in a criminal case and may order such suspension only as authorized by statute."

The first syllabus of the same case is as follows:

“Criminal procedure in this state is regulated entirely by statute, and the state has thus created its system of criminal law covering questions of crime and penalties, and has provided its own definitions and procedure.”

The court in the last case cited above recognized the power of the legislature on the subject, for on page 108 of the opinion it is stated:

“The Legislature has made provision for the suspension and the *imposition* of sentence and the placing of an accused on probation by Sections 13452-1 to 13452-11, General Code; second, for suspension of *execution* of sentence pending perfection of error proceedings, by Sections 13453-1 to 13453-6, General Code; and, third, for the conditional sentence of persons convicted of misdemeanors, by Section 13451-8, General Code.” (Italics are as they appear in the court’s opinion.)

The court stated in that case, however, that it found no statutory authority to suspend the *execution* of sentences except as authorized by the sections of the Code specifically mentioned.

It will be here noted, and later discussed, that the legislature expressly excepted certain crimes from the operation of the section relative to probation and that the Code sections referred to in the opinion apply to offenses where the imposition of sentence was apparently made mandatory. In section 13452-1 a specific exception was made of the crime mentioned in section 6212-17.

The Supreme Court had previously in the case of *Madjorous vs. The State of Ohio*, 113 O. S., 427, passed upon the power of the legislature to provide that a court could not suspend sentence, and at page 432 the court uses this significant language:

“It (the legislature) has the power to provide the procedure to fix conditions and limitations upon definitions of crimes and upon provisions for practice and procedure. In short, it has the power to give and the power to take away.”

In view of the foregoing, I am of the opinion that the enactment of Senate Bill No. 133 represented a valid exercise of legislative power and authority.

There remains for determination the question of the applicability of sections 13451-8a and 13451-8b, General Code, to misdemeanors mentioned in section 1454, General Code.

By virtue of section 1448, General Code, justices of the peace, mayors, or police judges are given final jurisdiction in prosecutions under the so-called fish and game laws, and there can be no doubt that the provisions of sections 13451-8a and 13451-8b referring to any court, are broad enough to encompass those officers.

Sections 1454 and 13451-8a and 13451-8b are all laws of a general nature, having a uniform operation throughout the state, and, if possible, they should be harmonized and so construed as to make effective the intent of the legislature enacting them. On this point reference is made to the case of *Dolan vs. Thomas*, 12 Allen, 421, wherein it is stated in the opinion:

“When a statute is to be construed in reference to or in connection with a previous enactment, it is necessary to consider whether the two can have full

operation and be carried into effect harmoniously. If they can, then both are to stand. Repeals by implication are not favored. It is the substance of the different enactments that is to be regarded in order to ascertain the intent of the legislature as to their operation and effect."

The court in its discussion also says:

"The later enactment does not change any previously prescribed penalty, nor does it substitute a new or different kind of punishment in the place of that which former statutes had affixed to certain classes of offenses. The effect of the statute was merely to vest in the court a discretion, by the exercise of which they were authorized to mitigate the sentence to which an offender was liable, by dispensing with a portion of the prescribed penalty. The extent of the repeal of previous statutes then is only this: that in a certain class of cases, instead of a fixed and inflexible rule of punishment, which could not be modified or varied, the court has authority to substitute a milder sentence. * * * It only authorizes a mitigation of penalty; it is therefore an act of clemency which violates no right, but grants a privilege to a convicted party."

Applying the reasoning of the above cases to the question submitted, it is my opinion that all three sections can be harmonized and given the full force and effect intended by the legislature.

Sections 13451-8a and 13451-8b did not change the previous enactment so far as the offense itself is concerned or as to the penalty, but merely vests the court with authority to direct the time and manner of the payment of the fine and to remit and suspend sentence upon terms.

The duty to sentence remains unaffected. It is true that section 1454 provides that the defendant *shall be fined*, and it might be argued that this is a special and mandatory provision, but every penal section of the Code expressly provides that the court *shall* impose the sentence provided even in felonies; and the court in the case of *Municipal Court of Toledo vs. State ex rel. Platter*, supra, sustained the application of the general law of probation to such statutes. Rather than amend each and every penal section by providing for probation as to each separate offense, the legislature passed a general law (G. C. 13452-1, et seq.) and provided for desired exceptions.

Had the legislature intended to except violations of the fish and game laws it could easily have followed its former policy and by apt words made such exception. Its failure to except indicates its intention to include.

Furthermore, it must be noted that section 13451-8a applies to any case where the court is *required* to impose sentence, and by the very nature of things, Senate Bill No. 133 had to apply to mandatory provisions, for if the court had discretion or authority to suspend sentence as to any particular offense, there would have been no need for the passage of said bill. The fact that a jail or workhouse term was made mandatory by section 1454 does not change the situation for commitment followed the imposition of the fine and was a result of default in payment, and such provision still remains in force.

Reference is made in your request to the authority of the Conservation Commissioner to release a convicted defendant from confinement or parole. Sections 13451-8a and 13451-8b do not disturb this power. Under section 1454, General Code, the Conservation Commissioner has nothing whatever to do with the imposition of the sentence. His jurisdiction attaches only after sentence by the court, default by the defendant, and commitment.

Under section 13451-8a the court at the time of sentence directs the time and man-

ner of payment of the fine, and if the defendant fails to pay in accordance therewith, or if under section 13451-8b the court remits or suspends the sentence upon terms, and the defendant does not comply with such terms, there is a default, and the provisions of section 1454 as to default and commitment as a result thereof would apply, and the power of parole is given to the Conservation Commissioner; keeping in mind that it is the duty of the court to sentence, and that the powers granted to the trial court by said sections 13451-8a and 13451-8b, must be exercised by the court at the time of the sentence, and that such powers with respect thereto terminate at the time that the sentence is imposed.

I am therefore of the opinion, in specific answer to your inquiry, that any court having jurisdiction over the misdemeanors mentioned and provided for by section 1454 may, at the time of sentence, direct the time and manner of payment of the fine, which time shall in no case exceed one year from the date of sentence, as provided by section 13451-8a of the General Code, and that such court may, at the time of sentence, remit the same or suspend such sentence in whole or in part upon such terms as the court may impose, as provided by section 13451-8b of the General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4108.

FIREMEN'S PENSION FUND—TRUSTEES MAY ADOPT REASONABLE RULES
RESPECTING ELIGIBILITY FOR PENSION INCLUDING YEARS OF
SERVICE.

SYLLABUS:

The Trustees of a Firemen's Pension Fund may adopt reasonable rules and regulations relative to the qualifications, including the number of years of service, which render a fireman eligible to receive a pension from such fund.

COLUMBUS, OHIO, APRIL 2, 1935.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion upon a question propounded by the City Solicitor of Xenia. The letter from the City Solicitor reads as follows:

“The City of Xenia has created under the provisions of the General Code, a Firemen's Pension Fund, which has been duly organized with six trustees selected as provided by law.

The Trustees have submitted to me as City Solicitor, for my approval as to the legality and form, the rules and regulations which they have recently adopted after examining similar regulations in other cities in the state.

After examining these rules and regulations there is one point which arises which involves the respective powers of the Board of Trustees of the Firemen's Pension Fund and the legislative body of the City, which in my opinion is worthy of requesting a formal opinion from the Attorney General,