

of Columbus, the City of Grandview Heights and the Chesapeake and Ohio Railway Company providing for the elimination of the grade crossing over the tracks of the Chesapeake and Ohio Railway Company on Goodale Street at a point in Franklin County, Ohio, and in the cities of Columbus and Grandview Heights and known as Federal Aid Grade Crossing, Project No. F. A. G. M. 971-A (1).

Upon examination of said agreement, it is my opinion that the same is in proper legal form and when properly executed will constitute a binding contract by and between the parties thereto.

I, therefore, hereby formally approve said agreement as to form and am returning the same herewith.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2822.

RIGHTS OF CITIZENSHIP—POWER TO RESTORE—VESTED
IN COMMON PLEAS COURT JUDGE UNDER SECTION
13452-7 GENERAL CODE—REMEDIAL STATUTE—LIBER-
ALLY CONSTRUED—RETROACTIVE STATUS—PROBA-
TION.

SYLLABUS:

Section 13452-7 of the General Code, being a remedial statute, should be given a liberal interpretation to carry out its purposes so that it may include all cases not expressly excluded; since there is nothing in the statute clearly indicating a legislative intent to exclude from the operation of this statute all persons who had been convicted prior to the effective date thereof, the judge of the Court of Common Pleas has the power to restore the rights of citizenship to a person who was convicted and placed on probation prior to the effective date of the statute to the same extent and in the same manner as he has the said power in connection with persons who have been convicted and placed on probation after the effective date of the statute.

COLUMBUS, OHIO, August 16, 1938.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR: I am in receipt of your recent communication which reads as follows:

"A question has arisen in this county in several cases respecting the right of the trial court to restore a convict to citizenship where the period of probation terminated prior to the time that Section 13452-7 of the General Code became effective.

In one case, 'A' was sentenced May 19, 1931, to the Ohio State Penitentiary. Sentence was suspended and he was placed on probation. The probation terminated on July 10, 1933, prior to the effective date of Section 13452-7 of the General Code.

I would appreciate your opinion as to the right of the trial judge under Section 13452-7 to restore to citizenship convicts whose probation terminated prior to October 17, 1933.

In this connection, your attention is directed to Sections 2161 and 2162 of the General Code and to House Bill No. 116, which was approved May 12, 1937. These latter references apparently relate to the State Parole Board but may be of some interest in connection with the question involved.

In the event that you should be of the opinion that the trial court cannot restore citizenship where the probation terminated prior to October 17, 1933, could these persons avail themselves of Sections 2161, 2162, and the provisions of House Bill No. 116?"

Section 13452-7 of the General Code reads as follows:

"When the defendant is brought before the judge or magistrate, such judge or magistrate shall immediately inquire into the conduct of the defendant, and may terminate the probation, and impose any sentence which might originally have been imposed or continue the probation and remand the defendant to the custody of the probation authority, at any time during the probationary period fixed as herein provided, when the ends of justice will be served and the good conduct of the person so held shall warrant it, the judge or magistrate may terminate the period of probation. At the end or termination of the period of probation, the jurisdiction of the judge or magistrate to impose sentence shall cease, and the defendant shall thereupon be discharged; and if the defendant has been convicted or pleaded guilty to a felony, the judge of the court of common pleas may, in his discretion, restore defendant to his rights of citizenship, of which such convict may or shall have been deprived by reason of his conviction under Section

13458-1, and if the court make such order of restoration to citizenship, an entry of the same shall be made on the journal of the court in the action in which the conviction or plea of guilty was entered. A probation officer shall be entitled to necessary expenses in the performance of his duties.”

At the outset it should be observed that this section is clearly remedial in its nature. (Lewis’ Sutherland Statutory Construction, Vol. 2, Second Edition, page 1239). Therefore, in construing this section we must adhere to the usual rules applicable to remedial statutes. First of all, a remedial statute should be given a liberal construction, as stated in Lewis’ Sutherland Statutory Construction, Vol. 2, Second Edition, page 1244:

“In construing a remedial statute which has for its end the promotion of important and beneficial public objects, a large construction is to be given when it can be done without doing actual violence to its terms; * * *”

There is great logic in arguing for the liberal construction of remedial statutes inasmuch as such statutes are for the correction of a condition which is to the public detriment and it is to be presumed that the Legislature intended that it should be given as broad an application as possible. We find that the following statement appearing on page 1227 of Sutherland, supra, is amply supported by cases which appear in Footnote No. 1 on page 1228:

“General words in remedial statutes may be applied to the past transactions and pending cases, according to all indications of legislative intent, and this may be greatly influenced by consideration of convenience, reasonableness and justice.”

Looking now to the particular statute here under consideration, we find that the judge of the Common Pleas Court may restore rights of citizenship “at the end or termination of the period of probation.” Although the word “at” has often been construed to mean a particular instant or a period of time proximate thereto, we also find that there is authority to the effect that the word may be interpreted as meaning “not before” or “after”. On this point I cite the following quotation from 5 Corpus Juris Secundum, page 158;

“In line with the foregoing observations, and depending upon the context, ‘at’ has been variously defined as meaning after; * * * from and after; * * * at or after; * * * not before * * *.”

Apart from Section 13452-7, the only method by which a person convicted of a felony may have his rights of citizenship restored is by a gubernatorial pardon. It was evidently the intention of the Legislature to make it more simple for a person who was originally considered of such character as to deserve probation instead of incarceration, to secure a restoration of his rights of citizenship, and too, we may also infer, as a moving force behind this legislation, the belief that the restoration of the rights of citizenship to such a person would operate to the benefit of the general public in that such persons, if they had their rights of citizenship restored, would more likely consider themselves as integral parts of society rather than in a class set aside and known as "criminals".

With this in mind, I am of the opinion that Section 13452-7 should be given as broad a construction as possible and that the word "at" as used therein should be construed as meaning "not before." It is further my opinion, in view of the authorities heretofore cited, that the court may exercise the powers conferred upon it in this section regardless of whether or not the particular person was convicted before the effective date of this section and regardless of whether or not the period of probation had expired or terminated before said date. This construction certainly more closely approximates the dictates of "convenience, reasonableness and justice".

In coming to the above conclusion, I am not unmindful of the provisions of Section 28, Article II of the Constitution of Ohio, that:

"The General Assembly shall have no power to pass retroactive laws, * * *"

In my opinion the above construction of Section 13452-7 would not render the said section violative of this constitutional provision for as stated in 8 O. J. page 563:

"It is a well established rule of law that the constitutional prohibition of the enactment of retrospective laws does not apply to remedial legislation."

For additional authority on this point see: *Rairden vs. Holden*, 15 O. S. 207 and *Luff vs. The State of Ohio*, 117 O. S. 102.

I am also aware that it is said as a general rule that statutes are to be interpreted so as to give them a prospective rather than a retrospective operation. In this regard I first want to point out that I do not believe that the construction above advocated would give the statute a retroactive operation inasmuch as the action to be taken is in the future, i. e., after the effective date of the statute, and does not deprive

one of the rights and remedies which have accrued previous thereto. In the second place, even if it be said that the construction which I have outlined above would give the statute a retroactive operation, I would nevertheless be of the opinion that it is the correct one. As aforesaid, remedial statutes should be given a liberal construction and in my opinion, the following rule stated in Sutherland, *supra*, page 1075, should be followed:

“The letter of remedial statutes may be extended to include cases clearly within the mischief they were intended to remedy, unless such construction does violence to the language used; * * *”

In conclusion and to summarize, it is my opinion that Section 13452-7 of the General Code, being a remedial statute, should be given a liberal interpretation to carry out its purposes so that it may include all cases not expressly excluded and that since there is nothing in the statute clearly indicating a legislative intent to exclude from the operation of this statute all persons who had been convicted prior to the effective date thereof, the judge of the Court of Common Pleas has the power to restore the rights of citizenship to a person who was convicted and placed on probation prior to the effective date of the statute to the same extent and in the same manner as he has the said power in connection with persons who have been convicted and placed on probation after the effective date of the statute.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2823.

APPROVAL—BONDS OF CUYAHOGA COUNTY, OHIO,
\$15,000.00.

COLUMBUS, OHIO, August 16, 1938.

State Employes Retirement Board, Columbus, Ohio.

GENTLEMEN:

RE: Bonds of Cuyahoga County, Ohio, \$15,000.00.

The above purchase of bonds appears to be part of an issue of bonds of the above county dated December 16, 1932. The transcript