

"We believe that the only way in which a party may be released from imprisonment under his failure to pay his fine, imposed by a court of competent jurisdiction, for a misdemeanor under the Crabbe Act, is

"1. By the payment of his fine and costs ;

"2. By serving the length of time necessary to satisfy said fine and costs at the rate of 60c per day ;

"3. By a release under the pardoning power imposed in the Governor of the State of Ohio."

"Such seems to be the drastic intention of the legislature of the State of Ohio, and, until the legislature acts, the courts are powerless except to interpret their acts."

While Section 6212-17, General Code, is a later act than section 12382, General Code, I find nothing therein which, by applying the rule of construction of statutes, indicates in any way that the legislature intended to amend, even by implication, section 12382.

Section 6212-17, General Code, was intended as a curb upon courts which were abusing their powers by releasing persons upon whom sentence had been passed, under the mistaken impression that they had an inherent right to do so.

You will note that this section uses the words "remit" and "suspend", and in that connection can refer only to courts, as commissioners have no power whatever to suspend or remit sentences; and section 12382, General Code, merely makes provision for release of indigent prisoners for a time in order that they may earn money to pay their fines, and the next section provides that such prisoners shall again be confined if they fail to pay.

While Judge Agler made a very broad statement regarding release of prisoners in liquor cases, he did not have this question in the *West* case.

The probation sections of our Code also refer to the powers of courts and bear no relation to Section 12382 of our Code.

I can see no conflict between section 6212-17, General Code, and section 12382, General Code, nor can I see wherein section 6212-17 repeals section 12382. Repeals by implication must be clear to be effective and are frowned upon by the courts.

I am, therefore, of the opinion that the county commissioners may release indigent prisoners as provided by section 12382, General Code, even though they are confined for non payment of fines under the Crabbe Act.

Respectfully,

C. C. CRABBE,

Attorney General.

2343.

OFFICER OF HUMANE SOCIETY APPOINTED AS DEPUTY SHERIFF
MAY ONLY BE REMOVED BY COUNTY COMMISSIONERS.

SYLLABUS:

An officer of a humane society appointed, under section 5652-8, General Code, by the county commissioners to enforce the, so-called, dog law, may only be re-

moved by the county commissioners, and the sheriff has no authority whatsoever over such a deputy after approval of his appointment.

COLUMBUS, OHIO, April 4, 1925.

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

GENTLEMEN:—This will acknowledge receipt of your letter of March 26, 1925, as follows:

“Under section 5652-7, General Code, it is made the duty of the sheriff to patrol the county and seize all dogs not confined in a dog kennel and not wearing a valid registration tag. Under section 5652-8, General Code, it is provided that the county commissioners shall provide for deputy sheriffs necessary to carry out and enforce the provisions of the act. This section further provides that the county commissioners may, with the approval of the sheriff, designate and appoint any officer regularly employed by any society organized as provided by sections 10062 to 10067, inclusive, of the General Code, to act as deputy sheriff for the purpose of carrying out the provisions of this act.

“Question: When the county commissioners have made an appointment with the approval of the sheriff, who has the authority to remove said appointees, the county commissioners or the sheriff, and to whom is the person appointed responsible in enforcing the law?”

Section 5652-7, General Code, reads:

“County sheriffs shall patrol their respective counties and impound on sight all dogs more than three months of age, except dogs kept constantly confined in a registered dog kennel found not wearing valid registration tags. Whenever any person shall make an affidavit before a justice of the peace, mayor or a judge of the municipal court that a dog more than three months of age and not kept constantly confined in a registered dog kennel is not wearing a valid registration tag and is at large, or is kept or harbored in his jurisdiction, such justice of the peace, mayor or a judge of the municipal court shall forthwith order the sheriff of the county to seize and impound such animal. Thereupon such sheriff shall immediately seize and impound such dog so complained of. Such sheriff shall forthwith give notice to the owner of such dog if such owner be known to the sheriff, that such dog has been impounded, and that the same will be sold or destroyed if not redeemed within three days. If the owner of such dog be not known to the sheriff, he shall post a notice in the county court house describing the dog and place where seized and advising the unknown owner that such dog will be sold or destroyed if not redeemed within three days.”

Section 5652-8, General Code, reads:

“County commissioners shall provide for the employment of deputy sheriffs necessary to enforce the provisions of this act (G. C. sections 5652, et seq.), shall provide nets and other suitable devices for taking dogs in a humane manner, and except as hereinafter provided, shall also provide a suitable place for impounding dogs, and making proper provision for feeding and caring for the same, and shall also provide humane devices and

methods for destroying dogs. Provided, however, that in any county in which there is a society for the prevention of cruelty to children and animals, incorporated and organized as provided by law, and having one or more agents appointed in pursuance to law, and maintaining an animal shelter suitable for a dog pound and devices for humanely destroying dogs, county commissioners shall not be required to furnish a dog pound, but the sheriff shall deliver all dogs seized by him to such society for the prevention of cruelty to animals and children at its animal shelter, there to be dealt with in accordance with law, and the county commissioners shall provide for the payment of reasonable compensation to such society for its services so performed out of the dog and kennel fund.

"Provided, further, that the county commissioners may with the approval of the sheriff, designate and appoint any officer regularly employed by any society organized as provided by sections 10062 to 10067, inclusive, of the General Code, to act as deputy sheriff for the purpose of carrying out the provisions of this act, if such society whose agent is so employed, owns or controls a suitable place for keeping and destroying dogs."

Sections 10062 to 10067, inclusive, General Code, are the sections governing humane societies.

Section 5652-7, General Code, makes it the duty of the sheriff to impound dogs running at large and unlicensed dogs, and the first part of Section 5652-8 provides extra deputies to help the sheriff care for this additional burden to his other duties.

The last paragraph of section 5652-8, General Code, makes further provision for the carrying on of this work by some officer of the humane society and is designed to give such officer the authority of a deputy sheriff, but does not make such officer a member of the sheriff's force. This section merely creates the office of deputy sheriff in the humane society and, as far as the sheriff's authority in concerned therewith, is that when the officer of the humane society is designated by the commissioners, the sheriff shall approve their choice.

Having approved such appointee, the sheriff's authority ends. He cannot supervise the conduct of such a deputy, has no control over him, and his approval, once given, cannot be withdrawn.

He is in the same position as a senate approving an appointee of a president or a governor, where no provision is made for removal of such appointee by the approving body; and there is no such provision in the case under consideration.

Such a deputy is not a regular deputy with general police powers, but only has the duties of and power to enforce the dog law.

The sole power of appointing is in the hands of the commissioners, as the words of the statute are "the county commissioners may * * * designate and appoint * * *."

It is my opinion, therefore, that the sole power to take away the authority to act as a deputy sheriff from an officer of the humane society appointed by the commissioners to enforce the dog law lies with the commissioners.

Respectfully,

C. C. CRABBE,

Attorney General.