

2341.

APPROVAL, BONDS OF VILLAGE OF GARFIELD HEIGHTS, CUYAHOGA COUNTY, \$14,000.00.

COLUMBUS, OHIO, April 3, 1925.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2342.

RELEASE OF INDIGENT PRISONERS—COUNTY COMMISSIONERS MAY RELEASE PRISONERS AS PROVIDED BY SECTION 12382 G. C.

SYLLABUS:

Under section 12382, General Code, the county commissioners may release prisoners, as provided therein, even though such indigent prisoners are confined for fine and costs imposed for violation of the Crabbe Act, so-called.

COLUMBUS, OHIO, April 4, 1925.

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

GENTLEMEN:—In your letter of March 25, 1925, you request my opinion as follows:

“May the county commissioners, under the provisions of section 12382, General Code, release on parole an indigent person confined in the jail of such county for fine and costs alone, in the event that such person has been committed to the jail under the so-called Crabbe Act?”

Section 12382, General Code, reads:

“The county commissioners of a county not having a workhouse may release on parole an indigent prisoner confined in the jail of such county for fine and costs alone. The parole in such case shall be in writing, signed by the prisoner so released, and conditioned for the payment of the fine and costs by him in labor or money in installments or otherwise, and shall be approved by the prosecuting attorney of such county.”

Doubt in regard to this section arose because of the amendment to section 6212-17, General Code, which is in the following words:

“No fine or part thereof imposed hereunder shall be *remitted* nor shall any sentence imposed hereunder be suspended in whole or in part thereof.”

and further doubt was caused by the holding in the case of *State, ex rel. Freda West vs. Boyer, Supt.*, in the Court of Common Pleas of Stark County, Ohio, in which AGLER, J., said:

"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-