

OPINION 65-204**Syllabus:**

1. The common pleas court does not have the power to establish rules and regulations to provide for county jail inmates leaving the jail daily to continue their regular employment.

2. The common pleas courts, municipal courts, and county courts do not have the power to grant to persons convicted in their courts as part of their sentence to the county jail, the privilege of working at their regular employment away from the jail.

To: Clyde Osborne, Mahoning County Pros. Atty., Youngstown, Ohio
By: William B. Saxbe, Attorney General, November 23, 1965

Your letters of September 28, 1965 and October 4, 1965 requesting my opinion read as follows:

September 28, 1965 -

"The judges of the Court of Common Pleas of Mahoning County, Ohio, request your opinion on the provision of Section 341.04, Ohio Revised Code, on the following questions:

"1. May the judges promulgate rules and regulations to provide for the working privilege of inmates away from the jail?

"2. May working privileges be granted as a condition on probation when county jail sentence is made a part of the probation?

October 4, 1965 -

My letter of September 28, 1965 requesting your opinion on the question of working privileges for inmates of the county jail. The following are related and supplemental questions to be considered in your opinion:

"1. Do county court judges and municipal court judges have the right to grant working privileges in the county jail?

"2. Does a county court judge or a municipal court judge reserving jurisdiction when sentencing have the right to grant working privileges at a later date?

"3. Does a county sheriff have the right to refuse to grant working privileges when a county judge or municipal judge orders them?"

The authority of the various criminal courts in Ohio to impose sentence is set by statute. The common pleas, municipal and county courts, have the authority in cases of conviction of misdemeanor in their courts to: (1) suspend the sentence in whole or in part (Section 2947.13, Revised Code); (2) require a person convicted to enter into a "Peace Bond" or Recognizance (Section 2947.16 Revised Code); (3) suspend the imposition of the sentence and place the defendant on probation (Section 2951.02, Revised Code) or (4) impose the sentence required by the statutes under which the defendant was convicted, and specify the time the prisoner is to be at hard labor and at solitary confinement (Section 2947.09, Revised Code). Other than these specific statutes I find no power in these courts to suspend sentence, or to provide for conditions of incarceration. There is no inherent power in the court to do so. This power must come from the legislature. Municipal Court of Toledo v. State ex rel. Platter, 126 Ohio St., 103.

As stated above the only condition provided by statute that the court may impose on the sentence itself is the amount of time at hard labor and in solitary confinement. Section 2947.15, Revised Code, provides that the hard labor shall be under the direction of the board of county commissioners who shall adopt rules and regulations in relation thereto, by which the sheriff or other person having custody of the prisoner shall be governed. The rules the common pleas court is to promulgate under Section 341.06, Revised Code, are limited to the government of the county jail, itself, the employment of prisoners therein, and the general welfare of the prisoners while in the jail itself. Once a sentence has gone into execution, the sheriff has custody of the prisoner for the term of the sentence (Sec. 2949.08, Revised Code) and is responsible for the safe keeping of the prisoner in the county jail (Sec. 341.01, Revised Code).

To allow the court to impose a condition on a sentence that the prisoner be allowed to leave the jail daily to continue his regular employment, would be inconsistent with the sheriff's custody, his duty to keep the prisoner safely, and the county commissioners' duty to regulate hard labor "within or without the jail."

Moreover the Ohio Legislature had before it this year proposed legislation which would have allowed the sheriff or superintendents of penal institutions to arrange for the continuation of a prisoner's regular employment. This Bill (Senate Bill No. 299) was introduced April 12, 1965, referred to committee April 13, 1965, and there allowed to die. Note, the sheriff and not the sentencing court would have made the arrangements, in keeping with the reasoning above that the sheriff has exclusive custody once the sentence begins to run.

This is the conclusion reached in other states when the question has been raised. In an annotation in 39 A.L.R. 2d 985, "Power of Court to Provide for Intermittent Incarceration" the editor concluded:

"It would seem to be the rule, if any can be drawn from such scant authority, that a court does not have the power to provide for intermittent incarceration in the sentence it imposes."

Although the authority is scant there is none to the contrary.

For the above reasons I must conclude that the common pleas courts, the municipal courts, and the county courts have no authority to grant working privileges as a condition to the sentence they impose.

However, it is clear that these courts have the power to order the exact periods of confinement under their broad discretionary power to "suspend sentence in whole or in part on such terms as the court may impose" (Section 2947.13, Revised Code). This does not, however, broaden the power above set forth as to establishing rules and regulations for the government of the county jail under Section 341.06, Revised Code.

In conclusion then and to specifically answer the questions propounded to me it is my opinion and I so advise that:

(1) The court of Common Pleas may not promulgate rules and regulations to provide for the "working privileges" of inmates sentenced to the county jail; (2) "working privileges" may not be granted as a condition of probation when county jail sentence is made a part of probation; (3) county court judges or municipal court judges do not have the power to grant "working privileges" in the county jail; (4) county court judges or municipal court judges reserving jurisdiction when sentencing do not have the right to grant working privileges at a later date. In view of the answers to the first four questions it is not necessary to answer the question pertaining to the right of a sheriff to refuse to grant working privileges ordered by a county judge or municipal judge.