

and Columbiana Counties and even if the service of the library is extended to Mahoning and Columbiana Counties, a comparatively small part of the service afforded by the library is likely to be utilized or needed by the inhabitants of these counties, as the territory of these counties contiguous to the Alliance City School District is not thickly settled and other library service is available to, and more convenient for, the inhabitants of the centers of population within these counties. To some extent this is true with respect to Stark County outside the boundaries of the Alliance City School District.

All these considerations have some weight in adjusting the several amounts to be contributed by each county to which library service is extended, from the classified property taxes for the support of this library. Chief consideration should be given to the fact that practically the entire Alliance City School District lies in Stark County and that under the law, there is probably no other source of revenue for the maintenance of the library than classified property taxes collected within the county or counties to which library service is extended.

No settled rule can be formulated for the guidance of budget commissions under circumstances such as this, or in any case where libraries are involved. Fixing of the amount of proceeds for classified property taxes to be distributed to boards of library trustees and the adjustments that must be made when distributing these taxes to meet the several purposes for which the taxes are levied, whether or not more than one county is involved, is an administrative problem rather than a legal one. The statute reposes that duty in the several budget commissions throughout the state but affords no definite rule for their guidance.

I am therefore of the opinion in specific answer to your questions:

1. The board of trustees of the school district library in the Alliance City School District may, in its discretion, by the adoption of appropriate rules and regulations in pursuance of Section 5625-20, General Code, extend the benefits of the service of the said library to the inhabitants of Stark County only.

2. In the event the said board of trustees does not extend the benefits of the said library service to the inhabitants of Columbiana and Mahoning Counties outside the boundaries of the Alliance City School District but to the inhabitants of Stark County only, the said board will not be permitted to participate in the proceeds of classified property taxes collected in the said Mahoning and Columbiana Counties.

3. Should the said board of trustees extend the benefits of its library service to the inhabitants of all three of the counties in which portions of the Alliance City School District lie, it may lawfully participate in the proceeds of the classified property taxes collected in the three counties. The extent of this participation in each such county should be based as nearly as possible on the comparative library service afforded to the inhabitants of the respective counties including those living in the Alliance City School District.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2517.

JUVENILE COURT—JUDGE UNAUTHORIZED TO SUSPEND EXECUTION OF SENTENCE AFTER PERSON IMPRISONED FOR VIOLATION OF SECTIONS 1654 OR 1655, GENERAL CODE.

SYLLABUS:

The Judge of a juvenile court is not authorized to suspend the execution of a sentence after a person has been imprisoned for violation of either Section 1654 of the General Code or Section 1655 of the General Code and is not given authority to place such a person so imprisoned, on parole or probation.

COLUMBUS, OHIO, April 17, 1934.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cuyahoga County, Criminal Courts Building, East 21st Street, Cleveland, Ohio.*

DEAR SIR:—I have your request for an opinion in your letter of recent date which reads:

“The Judge of the Juvenile Court of Cuyahoga County has asked me to request your opinion upon the enclosed state of facts.

* * * * *

STATE OF FACTS.

Juvenile Code Section 1655 provides that ‘Whoever is charged by law with the care, support, maintenance or education of a minor under the age of eighteen years, and is able to support, or contribute towards the support or education of such minor, fails, neglects or refuses so to do or whoever being the father of an illegitimate child under the age of sixteen years, and able to support or contribute towards the support of such child, fails, neglects or refuses so to do shall be fined not less than Ten Dollars nor more than Five Hundred Dollars, or imprisoned not less than ten days nor more than one year, or both.’

Section 1654 of the Juvenile Code provides that: ‘Whoever abuses a child, or aids, abets, induces, causes, encourages or contributes towards the dependency, neglect or delinquency, as herein defined, of a minor under the age of eighteen years, shall be fined not less than Ten Dollars, nor more than One Thousand Dollars, or imprisoned not less than ten days, nor more than one year, or both’.

Section 1666 of the Juvenile Code provides: ‘In every case of conviction, and where imprisonment is imposed as part of the punishment, such judge may suspend sentence upon such condition as he imposes’.

Please advise in your opinion whether or not a juvenile judge has authority to suspend sentence of a defendant sentenced to imprisonment under either Section 1655 or 1654, and place such defendant on parole or probation after he has been sentenced to the Workhouse and has served a portion of his sentence of imprisonment.

For example: AB is convicted of non-support of his minor child under General Code Section 1655; CD is convicted of contributing to the delinquency of a minor child under General Code Section 1654; in each case the sentence of the court is imprisonment for one year and a fine of \$25.00 and costs. AB and CD are sent to the workhouse under sentence of one year and have served two months of their sentence.

Has the Juvenile Judge authority to suspend sentence in each case and put the defendants on parole or probation?”

The question presented is:

Has a judge of a Juvenile Court the authority to suspend sentence of a

defendant sentenced to imprisonment, under either section 1654 or 1655 of the General Code and place such defendant on parole or probation after he has been sentenced to the workhouse and has served a portion of his sentence of imprisonment?

Section 1666 of the General Code reads:

“In every case of conviction and where imprisonment is imposed as part of the punishment, such judge may suspend sentence upon such conditions as he imposes.”

Section 13452-1 G. C. reads:

“In prosecutions for crime, except as mentioned in G. C. 6212-17, and as hereinafter provided, where the defendant has pleaded, or been found guilty and it appears to the satisfaction of the judge or magistrate that the character of the defendant and the circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and the public good does not demand or require that he be immediately sentenced, such judge or magistrate may suspend the imposition of the sentence and place the defendant on probation in the manner provided by law, and upon such terms and conditions as such judge or magistrate may determine; provided, that juvenile delinquents shall not be included within this provision.”

The case of *Municipal Court of Toledo et al. vs. The State, ex rel. Platter*, 126 Ohio State Reports, page 103 discusses and is decisive of certain phases of your question. Sections 1, 2 and 3 of the syllabus are as follows:

1. “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.

2. By statute, authority is conferred upon trial judges to suspend imposition of sentence and place the defendant upon probation; also discretionary power is conferred upon trial judges to suspend execution of sentence of one convicted of a bailable offense for such period as will give the accused time to prepare, file or apply for leave to file a petition for review of such conviction. Also provision is made for conditional sentence in misdemeanors.

3. 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.”

Your attention is also invited to the opinion of the court on Page 108 which reads as follows:

“As to the second proposition, pertaining to the power of the municipal court to suspend execution of sentence, it should be noted that there is a distinction between suspension of imposition of sentence and suspension of execution of sentence. We find no statutory authority to suspend the execution of the sentences previously imposed by such

court on conviction of violating a state law, except to enable defendant to prosecute error or to be placed on probation, as provided by statute; nor did the municipal court have inherent power so to do."

The opinion further discusses this matter on Page 110 as follows:

"Reference might be made to the many authorities supporting the proposition that state courts have generally denied the existence of inherent power to suspend execution of sentences. In *Ex parte United States*, supra, in the opinion of Mr. Justice White, a voluminous note sets forth a large number of cases upon that point. The matter is well stated in 8 *Ruling Case Law*, 253, Section 258: 'On principle and authority the right of the court to suspend the execution of the sentence after it has been pronounced cannot be sustained, except as incident to a review of the case on a writ of error, or on other well-established legal grounds. After sentence given, the matter within these limits would seem to be wholly within the hands of the executive officers of the law. The sole power is vested in the governor to grant reprieves, commutations, and pardons after conviction, on such conditions and with such restrictions and limitations as he may think proper. And the action of the court after it had regularly pronounced the punishment provided by law for the offense is clearly obnoxious to the objection that it is an attempted exercise of power not judicial but vested in the executive; and it has been likened to the incorporation into our criminal jurisprudence of the 'ticket of leave system,' without any of its safe-guards, leaving the convicted criminal subject to the mere option or caprice of the judge, who may direct the enforcement of the sentence after any lapse of time, however great, or withhold it, to the serious detriment, it may be, of the interests of the public,—a power plainly liable to abuse.'

Many cases are cited in the notes in support of the text. The same principle is announced in 16 *Corpus Juris* 1333: 'According to the weight of authority, after sentence has been pronounced, the court has no power indefinitely to suspend its execution, either in whole or in part, and any such order made after judgment, or as a part thereof, is to that extent wholly void * * *.'

See 1928 O. A. G. Vol. II, page 1330:

SYLLABUS:

2. "Courts do not possess inherent power to suspend the execution of sentences imposed in criminal cases, except to stay the sentences for a time after conviction for the purpose of giving an opportunity for a motion for a new trial or in arrest of judgment, or during the pendency of a proceeding in error, or to afford time for executive clemency.

4. The provisions of Section 1666, General Code, relating to the power of juvenile courts to grant conditional suspension of sentences in juvenile cases; of Section 13010, General Code, relating to conditional suspension of sentences in non-support cases; and of Section 13706 and related sections of the General Code, permitting the suspension of the imposition of sentences in criminal cases generally, are exclusive, and trial courts in Ohio are without power to grant suspensions of the execution or imposition of sentences except as may be authorized in one of these sections, or in the several sections, relating to the suspension of the execution of sentences during error proceedings."

1928 O. A. G. 2657, Vol. III, page 2237:

SYLLABUS:

"Where a person has been convicted of a felony and sentenced to imprisonment in one of the penal institutions of this state, and such sentence has been executed in part, the trial court is without jurisdiction, either after or during term, to vacate the judgment imposing the sentence and cause the prisoner to be discharged. In such a case, where the prisoner is confined in the Ohio State Reformatory, the superintendent of such institution is justified in refusing to honor the order of the court discharging the prisoner."

Section 13451-8a, 115 O. L. 543, reads:

Sec. 2.—

"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 13452-1 provides that under certain circumstances the judge or magistrate "may *suspend the imposition* of the sentence and place the defendant on probation."

It seems clear that the authority of a court or magistrate to "suspend" a sentence and place a defendant "on probation" must be such as is contained in the laws of Ohio and is limited thereby.

Section 1666 G. C. *supra*, is definite in providing that, "such judge may *suspend sentence* upon such terms as he imposes." The language of the statute cannot be made to include taking some action, as attempting to parole or place on probation, after sentence is given or imposed, but only gives the judge the right, upon such terms as he imposes, to suspend the sentence where imprisonment is imposed as a part of the penalty.

Bouvier defines "sentence" as, "A judgment or judicial declaration made by a judge in a cause. The term 'judgment' is more usually applied to civil, and 'sentence' to criminal, proceedings."

In specific answer to your inquiry, my opinion is that the Judge of a juvenile court is not authorized to suspend the execution of a sentence after a person has been imprisoned for violation of either Section 1654 of the General Code or Section 1655 of the General Code and is not given authority to place such a person so imprisoned, on parole or probation.

Respectfully,
JOHN W. BRICKER,
Attorney General.

2518.

APPROVAL, NOTES OF AUBURN RURAL SCHOOL DISTRICT, TUSCARAWAS COUNTY, OHIO—\$1,196.00.

COLUMBUS, OHIO, April 17, 1934.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.