

**Opinion No. 407****Justices of the Peace—Fines—Crime  
and Criminal Procedure—Courts.**

**HELD:** A Justice of the Peace may not release one who pleads guilty of an offense, for the purpose of raising funds with which to pay the fine.

December 18, 1933.

You submit the following matter and request an opinion thereon:

"On November 10 a defendant plead guilty to a charge of unlawfully killing deer. The Justice fined the defendant \$75.00, entered upon his docket that in case the fine was not paid the defendant was to serve one day in the county jail for each \$2.00 of the fine and costs. The Justice, however, took a check from the defendant dated November 25, and released the defendant so that he might get funds to cover the check. This has not been done, and I received a letter from Mr. Marlowe, attorney of Missoula, stating that he intended to test the right of the Justice to extend time to a defendant in which to raise money with which to pay his fine.

"Can the defendant be arrested again and confined in jail until the fine is paid or one day served for each \$2.00 thereof?"

"May the judgment be executed?"  
Section 12326, Revised Codes 1921, is as follows:

"When the defendant pleads guilty, or is convicted, either by the court or by a jury, the court must render judgment thereon of fine or imprisonment, or both, as the case may be.

The judgment must be executed by the sheriff, constable, marshal or policeman of the jurisdiction in which the conviction was had."

Section 12329 is as follows:

"A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine is satisfied, in the proportion of one day's imprisonment for every two dollars of the fine."

Section 12332 is as follows:

"After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, unless the defendant waive the postponement. If postponed, the court may hold the defendant to bail to appear for judgment. A judgment must be entered in the minutes of the court as soon as rendered."

Section 12341 is as follows:

"When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution. When a judgment is entered imposing a fine, or ordering the defendant to be imprisoned until the fine is paid, he must be held in custody during the time specified in the judgment, unless the fine is sooner paid."

Under these statutes the duty of the Justice is clear: the judgment must be rendered; it must be entered on the records of the Justice Court; it must be executed by the sheriff, constable, marshal or policeman; the Justice must deliver to the sheriff or other officer a certified copy of the judgment and the prisoner held in custody, if judgment is a fine, until the fine is paid.

Public officers have only such powers as are conferred upon them by law. (*National Surety Company v. Sand Springs State Bank*, 177 Pac. 574; *Shaw v. Grumbine*, 278 Pac. 311; 36 Cyc. 865; *In re Farrell*, 36 Mont. 254, at page 262.)

The act of the Justice in releasing the person fined was an act outside of the law and a plain, arbitrary and inexcusable exercise of a power for which

there is no statutory authority; an attempt on his part to nullify the judgment previously rendered. Therefore, our answer to the first question is "yes".

Answering the second question, execution of judgment having begun the defendant should be returned to the county jail to serve out the remainder of the period of imprisonment. (16 *Corpus Juris* 1312, 1335; *Shondell v. Bradley*, 181 N. E. 559; *Egbert v. Tauer*, 132 N. E. 370; *Friske v. Circuit Court*, 214 N. W. 812; *Scott v. McClelland*, 133 S. E. 923; *Ex parte Jennings*, 267 Pac. 227; *Ex parte Clark*, 234 Pac. 109; *Hopkins v. North*, 135 Atl. 367, 49 A. L. R. 1303; *In re Riggs*, 203 N. W. 999; *In re Birbiglia*, 99 South. 462; *Ex parte Fisher*, 121 S. E. 287; *Ex parte Thornberry*, 254 S. W. 1087.)