

Opinion No. 70**Fines, Remission of—District Courts—Justice of the Peace—
Suspended Sentence**

Held: A judge or justice of the peace does not have the authority to suspend the imposition of a fine after the same has been levied.

August 4, 1958

Mr. Chester L. Jones
County Attorney
Madison County
Virginia City, Montana

Dear Mr. Jones:

You have requested my opinion whether Section 94-7832, RCM, 1947, (enacted Sec. 6, Ch. 194, L. 1955) authorizes a judge or justice of the peace to suspend the imposition of a fine after the fine has been levied.

Section 94-7832, *supra*, provides:

"Whenever any person has been found guilty of a crime or offense upon verdict or plea, the court may adjudge as follows:

"(1) Release the defendant on probation, (2) Suspend the imposition or execution of sentence, (3) Impose a fine as provided by law for the offense, (4) Impose any combination of (1), (2), (3), or (5) Commit the defendant to a correctional institution with or without a fine as provided by law for the offense."

Attorney General Bottomly in 20 Opinions of the Attorney General, page 140, passed upon this same question and held that a justice of the peace had no authority to suspend or remit a fine which he has imposed. At page 141 of his opinion the then Attorney General said:

"Furthermore, the 'suspension' of a fine indefinitely—as is indicated by your inquiry—would be substantially the remission of the fine. That is definitely and conclusively beyond the power of the justice of the peace, for the power to remit fines has been lodged by the Constitution of Montana (Article VII, Section 9) in the Governor of the state, subject to the approval of the board of pardons. See also Volume 11, pages 88-89, and Volume 16, Opinion No. 361, page 355, Report and Official Opinions of the Attorney General, wherein Attorneys General Foot and Nagle respectively ruled a justice of the peace is without authority to remit a fine which he has imposed."

Section 94-7832, *supra*, does not effect the holding of that opinion. The portion of the statute which provides that the court may:

"(2) Suspend the imposition or execution of sentence."
has reference to the power of the trial court to suspend both the im-

posing **and** the execution of a sentence in aid of the court's authority to release the convicted defendant upon probation. (See U.S. vs. Murray, 275 U.S. 347, 358; 48 S. Ct. 146, 149; 72 L. Ed. 309; 43 Stat. 1259, c. 521, 18 U.S.C.A. Section 3651; Lloyd vs. Superior Court, 208, Cal. 622, 283 Pac. 931.)

It is my opinion, therefore, that the opinion of Attorney General Bottomly controls the determination of this question, and a judge or justice of the peace does not have the authority to suspend the imposition of a fine after the same has been levied.

Very truly yours,
FORREST H. ANDERSON
Attorney General