

**Governor—Fines—Forfeitures—Sureties—Bail Bond.**

The governor, under his authority to remit fines and forfeitures, may relieve sureties on a forfeited bail bond in his discretion.

Hon. J. E. Erickson,  
Governor of Montana,  
Helena, Montana.

May 19, 1925.

My dear Governor Erickson:

You have requested my opinion whether you have power to relieve sureties on a bail bond given in a criminal case which was ordered forfeited because of the failure of the defendant to appear for trial.

It appears from the facts submitted by you that the defendant in the criminal action did not appear at the time his case was called for trial, but did appear and surrender himself for trial later on the same day. The bail was declared forfeited and the bondsmen are now being sued.

Section 9 of article VII of the Montana constitution, as well as section 12247, R. C. M. 1921, empowers the governor to "remit fines and forfeitures."

The question then is: Do these facts recited above amount to a "forfeiture" within the meaning of the constitution and statute?

It was, doubtless, by virtue of section 12160, R. C. M. 1921, that the forfeiture of the bail was declared. This section provides as follows:

"If, without sufficient excuse, the defendant neglects to appear for arraignment or for trial or judgment, or upon any other occasion when his presence in court may be lawfully required, or to surrender himself in execution of the judgment, the court must direct the fact to be entered upon its minutes, and the undertaking of bail, or the money deposited instead of bail, as the case may be, is thereupon forfeited. But if at any time before the final adjournment of the court, the defendant or his bail appear and satisfactorily excuse his neglect, the court may direct the forfeiture of the undertaking, or the deposit to be discharged upon such terms as may be just."

Before the sureties can be held proceedings must be taken against them.

Sec. 12161 R. C. M. 1921:  
State ex rel. Van vs. District Court, 54 Mont. 577.

Section 12160 gives the district court authority to discharge the forfeiture.

Section 12166 provides for the disposition of the bail in the event that forfeiture is not *discharged* or *remitted*. This would seem to indicate that the legislature had in mind that the governor's authority to remit fines and forfeitures extends to forfeited bail because the district judge is not given authority to *remit* forfeitures but only to *discharge* them.

The supreme court of this state has not passed upon this question. The courts of other states have, however, passed upon identical constitutional provisions and they all seem to be in accord in holding or assuming that the governor's authority to remit forfeitures extends to a case of this kind.

Harbin vs. State (Iowa) 42 N. W. 210;  
Commonwealth vs. Spraggins (Ky.) 18 B. Mon. 512;  
Commonwealth vs. Shick 61 Pa. St. 61;  
Hedrick vs. Sisk (Tex.) 11 S. W. 862;  
State vs. Dyches, 28 Tex. 535;  
Wood vs. Commonwealth (Ky.) 33 S. W. 729.

The fact that the court has like authority under the statute does not divest the governor of his authority to remit such a forfeiture.

State vs. Shideler, 51 Ind. 64;  
State vs. Rowe (Ind.) 2 N. E. 294.

The exercise of the power is, of course, discretionary. (6 C. J. page 1050, sec. 325.)

It is, therefore, my opinion that the power to "remit fines and forfeitures" extends to the right to relieve sureties on a forfeited bail bond.

Very truly yours,

L. A. FOOT,  
Attorney General.