

**Justices of the Peace—Suspended Sentences—Sentences—  
Probation.**

A justice of the peace has authority to give a suspended sentence under the provisions of section 12078 R. C. M. 1921, but the provisions of said section must be complied with, and the defendant placed on probation, as provided by law.

Ira. J. Stagg, Esq.,  
County Attorney,  
Anaconda, Montana.

May 3, 1927.

My dear Mr. Stagg:

You have requested my opinion on the following question: Has a justice of the peace authority to give a suspended sentence in a misdemeanor case, and, if so, must the defendant be placed on probation and under the supervision of the state board of prison commissioners?

Section 12078 R. C. M. 1921 provides as follows:

“In all prosecutions for crimes or misdemeanors, except as hereinafter provided, where the defendant has pleaded or been found guilty, or where the court or magistrate has power to sentence such defendant to any penal or other institution in this State, and it appears that the defendant has never before been imprisoned for crime either in this state or elsewhere (but detention in an institution for juvenile delinquents, delinquents shall not be considered imprisonment), and where it appears to the satisfaction of the court that the character of the defendant and circumstances of the case are such that he is not likely again to engage in an offensive course of conduct, and where it may appear that the public safety does not demand or require that the defendant shall suffer the penalty imposed by

law, said court may suspend the execution of the sentence and place the defendant on probation in the manner hereinafter provided. Nothing in this act contained shall in any manner affect the laws providing the method of dealing with the juvenile delinquents." .

The above section provides that the right to suspend a sentence extends to misdemeanor cases and it is quite evident from the manner in which the word "magistrate" is used, to-wit: "where the court or magistrate has power to sentence", that it refers to judges of courts not of record. It therefore was not the intent of the legislature to confine the granting of suspended sentences in misdemeanor cases to district courts alone as it would manifestly be unfair to extend **this right** to persons receiving their sentences in district courts and denying it to those unfortunate enough to be sentenced by a justice of the peace.

This suspended sentence must, however, be allowed for the reasons expressed in said section and none other and there is no authority for granting a suspended sentence upon the condition that the defendant will leave town. Furthermore, since the only authority for suspending a sentence is that found in section 12078, supra, where a sentence is suspended, the provisions of said section must be strictly complied with and the defendant placed upon probation and under the supervision of the state board of prison commissioners as provided in section 12082 R. C. M. 1921.

It is therefore my opinion that a justice of the peace has authority to grant a suspended sentence where it appears to the satisfaction of the court that the character of the defendant and circumstances of the case are such that he is not likely to engage again in an offensive course of conduct, and where it may appear that the public safety does not demand or require that the defendant shall suffer the penalty imposed by law, providing, of course, that the defendant has never before been in prison for crime either in this state or elsewhere and that where such sentence is suspended the defendant must be placed on probation as provided by law.

Very truly yours,

L. A. FOOT,  
Attorney General.