

Opinion No. 61**Justice of the Peace—Fines—Crime and Criminal Procedure—Courts.**

HELD: A Justice of the Peace or Police Judge does not have power to defer payment of a fine when once imposed or to permit the fine to be paid in installments.

If a defendant has been released in order to pay his fine in installments over a period of several months, such release is without authority of law and he may be rearrested and compelled to pay the fine or serve time in lieu of the payment.

A Justice of the Peace or Police Judge releasing a defendant without payment of fine is not liable under his bond for the fine imposed. The remedy is to rearrest the defendant and compel him to make payment.

May 9, 1939

Hon. W. A. Brown
State Examiner
The Capitol

Dear Mr. Brown:

You have submitted the following:

"1. Is a Justice of the Peace or Police Judge empowered to defer payment of a fine when once imposed, or to permit the fine to be paid in installments?"

"2. When a fine has been imposed, and before the fine is paid, the de-

fendant is released with the understanding that the fine is to be paid at a later date, or in installments over a period of several months, who, if anyone, has the authority to collect the fine, or the installments, in the event the defendant fails to pay as arranged?

"3. Can the defendant be rearrested when once released if he fails to pay the fine as arranged?"

"4. If a Justice of the Peace, or a Police Judge, as the case may be, authorizes the release of a defendant without payment of the fine imposed, can the Justice or the Police Judge be held accountable under his bond for the amount of the fine assessed? If not, what is the remedy?"

The first question was answered by this office in Opinion 407, Volume 15, Opinions of the Attorney General, page 284. We agree with this opinion.

There is no statutory authority permitting a justice of the peace or police judge to defer payment of a fine when once imposed or permit the fine to be paid in installments however desirable it may be in some cases. The legislature has not seen fit to grant such power. They have only such power as has been conferred by statute. In the opinion referred to, the Attorney General said (p. 285):

"The act of the Justice in releasing the person fined was an act outside 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."

We call attention to Sections 12326, 12329, 12332 and 12341, R. C. M., 1935.

Since the act of the justice of the peace in releasing the person fined, without payment of the fine, was without statutory authority, it is a nullity and the person fined may be rearrested for the purpose of serving time in lieu of payment of fine, if payment is not made. See Section 12329 Id.

We do not think the justice of the peace or police judge may be held accountable for the collection of the fine imposed, since the remedy is to re-

arrest the person fined and hold him in custody as specified in the judgment. See Section 12341 Id.