

No. 305

**JUSTICE COURT—JUDGMENT—FINES—
IMPRISONMENT**

Held: When a person has been sentenced in Justice Court to pay a fine only, he is entitled to be discharged from custody as soon as judgment is given. Upon his failure to pay the fine, he cannot be re-arrested; but the State must resort to a writ of execution. If judgment in a Justice Court is for fine and imprisonment until paid, then the defendant must be held in custody during the time specified in the judgment unless the fine is sooner paid.

Mr. Maurice J. MacCormick
County Attorney
Powell County
Deer Lodge, Montana

December 4, 1941.

Dear Mr. MacCormick:

Recently you wrote to this office in part as follows, concerning Opinions Numbered 61 and 80 in Volume 18, Report & Official Opinions of the Attorney General:

"There might be some distinction in the same but one appears to be more or less contrary to the other. I would like to have that situation clarified, if you please."

I cannot subscribe to what has been held in Opinion No. 61, Volume 18, Report and Official Opinions of the Attorney General. I do, however, subscribe to the holding in Opinion No. 80, Volume 18, Report and Official Opinions of the Attorney General.

Section 12340, Revised Codes of Montana, 1935, provides:

"If judgment of acquittal is given, or judgment imposing a fine only, without imprisonment for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given."

Section 12088, Revised Codes of Montana, 1935, provides:

"If the judgment is for a fine alone, execution may be issued thereon as on a judgment in a civil action."

Section 12341, Revised Codes of Montana, 1935, provides in part:

". . . 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 judgment, unless the fine is sooner paid."

In *State ex rel. Hodgdon v. District Court*, 82 Pac. 663, 33 Mont. 119, 120, 121, the court said:

"If the judgment is for fine only, the defendant is entitled to be discharged from custody as soon as judgment is given. . . . But if the judgment is for fine and imprisonment until paid, as in this instance, then the defendant may be detained in custody until such fine is paid or until he shall have served one day for each \$2 of such fine."

Therefore, it is my opinion that, if the judgment is for the fine only, the defendant is entitled to be discharged from custody as soon as judgment is given. He cannot at any time thereafter be arrested for his failure to pay the fine. The state must resort to a writ of execution. But, if the judgment is for fine and imprisonment until paid, then the defendant must be held in custody during the time specified in the judgment unless the fine is sooner paid.

Sincerely yours,

JOHN W. BONNER
Attorney General