

Opinion No. 110.**Justices of the Peace—Fines—Suspension of Fines—Remission of Fines—Livestock Commission.**

Held: A justice of the peace has no authority to "suspend" or remit a fine which he has imposed.

August 18, 1943.

Mr. Paul Raftery
Secretary and Recorder of Marks and
Brands
Montana Livestock Commission
State Capitol
Helena, Montana

Dear Mr. Raftery:

You have inquired regarding the authority of a justice of the peace to "suspend" a fine which he has imposed for violation of the livestock inspection laws.

I have examined carefully the laws of this state relating to fines and suspensions of sentences, and find no statute which confers authority to "suspend" fines on a justice of the peace. If any attempt to exercise such a power is being made, it must under the erroneous assumption such authority is included within the provisions of Section 12078, Revised Codes of Montana, 1935, as amended by Chapter 184, Laws of 1937. That section is concerned with the power of courts to suspend sentences:

"In all prosecutions for crimes or misdemeanors, except as hereinafter provided, where the defendant has pleaded or been found guilty, or where 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 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. . . . Any judge, who has suspended a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence to revoke such suspension and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of prison commissioners as provided by law, or retain such jurisdiction with his court as is authorized by him or his successor . . ."

It appears the legislative intent—expressed in the above quoted section and in those following it in the Revised Codes of Montana of 1935—was to release a defendant only from the imprisonment attached to conviction for certain crimes or misdemeanors so long as the defendant does not violate his probation.

While it is true a fine is pecuniary punishment for the commission of a crime or misdemeanor (*Murphy v. State*, 119 Ore. 658, 250 Pac. 834, 835, 49 A. L. R. 384), it differs materially from the punishment of imprisonment. The social stigma inevitably attached to imprisonment is not present to such a degree in the payment of a fine. Confinement and loss of freedom likewise are not present. The association with prisoners who may sometimes be hardened and habitual criminals is not

occasioned by suffering the imposition of a fine.

It is obvious the purpose of the statute above quoted is not to free from punishment a first offender whose character and circumstances seem to merit consideration of the court. Its purpose, rather, is sociological, directed toward the possible reformation of a person—who although he has violated the law—is apparently unlikely again to engage in an offensive course of conduct, and hence is not required to suffer imprisonment. Bearing in mind the distinctions between a fine and a sentence of imprisonment, no such reasons can be conjured for the "suspension" of a fine.

In speaking of Section 12078, *supra*, the Montana Supreme Court has said:

"Statutes of this character are designed to afford first offenders an opportunity for reformation and should be construed liberally. Every necessary precaution is taken to protect the rights of the state and secure the interests of society. If the person placed on probation does not conform to the rules and regulations prescribed by the state board of prison commissioners, he is subject to arrest and to be confined as in the judgment directed, and the original sentence begins only upon the first day of his actual imprisonment . . ."

"It is to be kept in mind that under our suspended sentence statute the defendant is not in any true sense of the term a free man while on probation. He is in effect serving his sentence, though not within the prison walls. He earns his discharge through good conduct, as a prisoner may diminish his term by good time allowance under the provisions of sections 12455 and 12456; but the disabilities of the crime with respect to the rights of citizenship, if any, remain until removed in the manner provided by section 12263." (*Emphasis mine.*) (*State ex rel. Bottomly v. District Court et al.*, 73 Mont. 541, 546, 549, 550, 237 Pac. 525, 526, 528.)

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 a 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.

Hence, it is my opinion a justice of the peace has no authority to "suspend" or remit a fine which he has imposed.

Sincerely yours,
R. V. BOTTOMLY
Attorney General