

Opinion No. 24-3780

August 29, 1924

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Mrs. Grace B. Melaven, State Game Warden, Santa Fe, New Mexico.

Justices of the Peace Have no Power to Remit Fines Where the Amount of the Fine is Fixed by Statute.

OPINION

{*162} In substance, your inquiry is this:

"May Justices of the Peace remit fines where defendants have been convicted of or have pleaded guilty to taking game fish from the public waters of this state without a license?"

The statutes provide that any violation of the game laws in this particular "shall be punishable by a fine of not less than Twenty-five Dollars nor more than Two Hundred Dollars."

The statutes of New Mexico do not authorize Justices of the Peace to remit or suspend fines except as provided by Chap. 5, S. L. 1917. This chapter applies only where the defendant is a minor, or where the defendant is the husband or wife of the prosecuting witness, and even then the fine may not be suspended except during good behavior of the defendant and only on recommendation, in writing, of the prosecuting witness.

The principles involved in such procedure are discussed in the following cases:

As to the application to remit the fine, we have held that the Court below had not the power in a case of this character. * * * Where the amount of the fine is fixed by the statute, it would be a clear evasion of the law for the Court, after adjudging the fine fixed by law, to at once, without any other cause shown than the merits of the case, remit it. This would be an attempt to observe the form of the law, and at the same time wholly avoid its spirit and force. -- Tarrant v. State, 4 Tenn. 485.

After conviction and assessment of the fine by the jury, the Court has no power to remit the punishment imposed. That is the exercise of the pardoning power, which appertains exclusively to the Executive. Neither has the Court the power to remit costs. Those are matters of private right, which neither the Court nor any one else on behalf of the State, can release, without the consent of those to whom they are due. The Statute, though its meaning is not very clearly expressed, was evidently intended to empower the Court to fix such a limit to the term of imprisonment, as the Court, in its discretion, might deem

proper, upon satisfactory proof of the inability of the party to pay the fine and costs; but not to empower the Court to remit any portion of either the fine or costs. (Hart. Dig. Art. 401; Dixon v. The State, 2 Tex. R. 481.) The Court therefore erred in its judgment remitting a portion of the fine and costs. -- Lucky v. The State, 14 Tex. 401.

Section 16, Art. 4, Const. Iowa, and section 4712, Code, vests the power to grant reprieves, commutations, and pardons, and to remit fines and forfeitures, solely in the governor of the state. Neither the district attorney nor board of supervisors has any authority to remit fines. -- McKay v. Woodruff, 42 N. W. 429.

{*163} The pardoning power of New Mexico rests with the Governor:

Subject to such regulations as may be prescribed by law, the governor shall have power to grant reprieves and pardons, after conviction for all offenses except treason and in cases of impeachment. -- Sec. 6, Art. 5, Constitution.

The Legislature itself has no right to remit such an obligation or liability:

No obligation or liability of any person, association or corporation, held or owned by or owing to the state, or any municipal corporation therein shall ever be exchanged, transferred, remitted, released, postponed, or in any way diminished by the legislature, nor shall any such obligation or liability be extinguished except by the payment thereof into the proper treasury, or by proper proceeding in court. -- Sec. 32, Art. 4, Constitution.

We are of the opinion, therefore, that Justices of the Peace have no power, in the instances mentioned, to remit fines.

Relating to the remission of fines and penalties, see Sec. 2456, Code 1915 which provides:

Whenever, upon conviction, the person convicted fails to pay the fine and costs imposed upon him, he shall be committed to the county jail and shall there be kept confined one day for each dollar fine and costs adjudged against him, and he shall not be discharged therefrom by any board of officers, except upon the payment of the portion of the fine and costs remaining unserved, or upon the order of the Governor of this State.

We have advised you heretofore as to remedies against Justices of the Peace who fail to perform their duties under the law:

Sec. 3955, Code 1915 enumerates causes for removal from office and includes "failure, neglect or refusal to discharge the duties of the office, or failure, neglect or refusal to discharge any duty devolving upon the officer by virtue of his office."

Likewise, Justices of the Peace, under Secs. 3159, 3160 and 3161, subscribe to an oath and enter in the bond, to the effect that they will well and faithfully perform each and all the duties of their office. Justices of the Peace who fail to assess and enforce the penalties as provided by law, after conviction of any defendant, will be liable on their bonds for any failure in this connection.