

there is any power in the Federal courts of first instance to grant probation under the Probation Act, after the defendant has served any part of his sentence.

* * * * *

Executive clemency must of course cover every form of relief from punishment. The parole statute provides a board to be invested with full opportunity to watch the conduct of penitentiary convicts during their incarceration and to shorten it not only by the regular monthly reduction of days but by a larger diminution by parole.

What was lacking in these provisions was an amelioration of the sentence by delaying actual execution or providing a suspension so that the stigma might be withheld and an opportunity for reform and repentance before actual imprisonment should stain the life of the convict. This amelioration had been largely furnished by a power which trial courts, many of them, had exercised to suspend sentences.

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The great desideratum was the giving to young and new violators of law a chance to reform and to escape the contaminating influence of association with hardened or veteran criminals in the beginning of the imprisonment. Experience has shown that there was a real locus poenitentiae between the conviction and certainty of punishment, on the one hand, and the actual imprisonment and public disgrace of incarceration and evil association, on the other. If the case was a proper one, great good could be done in stopping punishment by putting the new criminal on probation. The avoidance of imprisonment at time of sentence was therefore the period to which the advocates of a Probation Act always directed their urgency. *Probation was not sought to shorten the term.* Probation is the attempted saving of a man who has taken one wrong step and whom the judge thinks to be a brand who can be plucked from the burning at the time of the imposition of the sentence. *The beginning of the service of the sentence in a criminal case ends the power of the court even in the same term to change it.* Ex parte Lange, 18 Wall. 163, 21 L. Ed. 872. *Such a limit for probation is a natural one to achieve its end.*" (Italics the writer's.)

From the foregoing discussion, and in specific answer to your question, it is my opinion that, where a person has been convicted of a felony and sentenced to imprisonment in one of the penal institutions of this state, and such sentence has been executed in part, the trial court is without jurisdiction, either after or during term, to vacate the judgment imposing the sentence and cause the prisoner to be discharged. In view of this conclusion, I am further of the opinion that the Superintendent of the Ohio State Reformatory in the case to which this opinion relates, is justified in refusing to honor the order of the court discharging the prisoners concerned.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2658.

FERTILIZER—MANUFACTURERS CERTIFICATE—REQUIREMENTS AS TO
AMMONIA AND NITROGEN DISCUSSED.

SYLLABUS:

The chemical analysis to be printed on the certificate, which must be attached to each package of commercial fertilizer manufactured, sold, or offered for sale in the State of Ohio,

may state the minimum percentage guaranteed of ammonia therein, by so stating it in terms of ammonia alone, or by stating the ammonia content and its equivalent in nitrogen, or the nitrogen content followed by a statement of its equivalent in ammonia.

COLUMBUS, OHIO, October 1, 1928.

HON. W. D. LEECH, *Acting Chief, Department of Agriculture, Division of Feeds and Fertilizers, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your request for my opinion, which reads as follows:

“The enclosed correspondence is self explanatory.

Will you please furnish us with your opinion on whether or not it is necessary to have an act of Legislature give manufacturers of fertilizers in Ohio the right to go upon a nitrogen basis.

We have no objection to a nitrogen basis and I have thought for many years that it should be legally adopted.”

The correspondence about which you speak in your communication consists of a letter from one of the manufacturers of commercial fertilizer, and reads in part as follows:—

“During January, 1928, at a joint conference between the fertilizer industry, state agronomists and experiment station officials, it was resolved that the fertilizer industry change from an ammonia basis to a nitrogen basis.
* * *

This proposed change, in stating the nitrogen content, will simply mean that instead of stating it ammonia 1% equivalent to nitrogen .82, it will be stated in terms of nitrogen as the whole number. For instance, nitrogen 1% equivalent to ammonia 1.21. * * *”

Sections 1150, 1151 and 1153, General Code, read in part as follows:

Section 1150. “Each person, firm or corporation who manufactures, sells or offers for sale in the state a commercial fertilizer * * * shall affix to each package in a conspicuous place on the outside thereof, a plainly printed certificate which shall state the number of net pounds contained therein, the name, brand or trade mark, under which it is sold, or offered for sale, the name of the manufacturer, with his or its postoffice address, such certificate shall contain also a chemical analysis which shall state the minimum percentages guaranteed of ammonia, of potash soluble in water, of phosphoric acid in available form, comprising the soluble and reverted, and of insoluble phosphoric acid, the sources of ammonia and the sources of insoluble phosphoric acid. * * *”

Section 1151. “No other form of analysis, and no duplication of terms or the equivalent thereof in other terms shall be used except that the nitrogen equivalent to the ammonia may be stated. * * *”

Section 1153. “No commercial fertilizer shall be sold or offered for sale if the percentage of any ingredient, or element or constituent is less than the minimum percentage claimed or guaranteed; provided that there may be a deficiency of six per cent of the amount claimed in any one ingredient before evidence of fraudulent intent shall be presumed; if there is a corre-

sponding excess in the other ingredients claimed on the basis of the following equivalents in value: One part of ammonia shall be deemed equivalent to three parts of available phosphoric acid; one part of ammonia shall be deemed equivalent to three parts of potash; one part of ammonia shall be deemed equivalent to six parts of insoluble phosphoric acid from animal matter; one part of ammonia shall be deemed equivalent to twelve parts of insoluble phosphoric acid from mixed animal and mineral matter; in bone or tankage one part of ammonia shall be deemed equivalent to five parts of total phosphoric acid."

From the plain terms of Section 1151, *supra*, it is apparent that so far as the certificate, which a manufacturer or seller of fertilizer is required to affix to each package showing the chemical analysis of the contents of the package or commercial fertilizer is concerned, the minimum percentage guaranteed of ammonia may be stated either in terms of ammonia alone, or, after so stating it, the nitrogen equivalent to the ammonia may also be stated. Clearly, if the nitrogen is stated and its equivalent in ammonia follows, the ammonia content may be determined by a simple computation. Inasmuch as the law permits the statement of the ammonia content to be made in either terms of ammonia alone or in terms of ammonia and its equivalent in nitrogen, the statement in terms of nitrogen and its equivalent in ammonia amounts to the same thing as the statement of the contents in terms of ammonia in the first place, and, in my opinion, is a full compliance with the law.

It is, of course, necessary that the ammonia content be stated in terms of ammonia, or that some basis of comparison be fixed whereby the ammonia content in terms of ammonia may be determined, if it is stated in terms of nitrogen, as otherwise, if the chemical analysis, as shown by the certificate be false, no means would exist of computing the number of parts of available phosphoric acid, insoluble phosphoric acid and potash, which Section 1153, *supra*, fixes as the equivalent of one part of ammonia, for the purpose of determining whether or not fraudulent intent may be presumed.

I am, therefore, of the opinion that the chemical analysis to be printed on the certificate, which must be attached to each package of commercial fertilizer manufactured, sold or offered for sale in the State of Ohio, may state the minimum percentage guaranteed of ammonia therein, by so stating it in terms of ammonia alone, or by stating the ammonia content and its equivalent in nitrogen, or the nitrogen content followed by a statement of its equivalent in ammonia.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2659.

MUNICIPAL COURT OF LORAIN—SERVING PROCESS—STATE CASES—
POLICE MAY COLLECT FEES FROM COUNTY—BAILIFF LIMITED
TO CITY COMPENSATION.

SYLLABUS:

1. *In view of the provisions of Section 1579-631, General Code, to the effect that the bailiff of the Municipal Court of Lorain shall receive, in addition to his compensation, his actual expenses incurred in serving process of the court from the city treasury, such section fixing the maximum thereof at \$40.00 per month, such bailiff is not entitled to receive from the county treasury, expenses incurred in serving process of such court in state cases.*