

CRIMINAL CONTEMPT: Disposition of fine imposed for criminal contempt.

May 29, 1947



Honorable Robert W. Winn
State Treasurer
Jefferson City, Missouri

Dear Sir:

Reference is made to your inquiry of recent date for an official opinion of this office, which read as follows:

"There has been deposited with me as State Treasurer of Missouri the sum of \$25,000 paid by W. D. Koon and Mrs. W. D. Koon in discharge of the fine imposed upon them in the case entitled 'State of Missouri ex inf. Attorney General vs. W. D. Koon and Mrs. W. D. Koon.'

"I request your opinion as to the proper disposition to be made of such money so deposited."

The case mentioned by you was determined by the Supreme Court of Missouri, in banc, at its January Session, 1947. In the proceeding, which was ancillary to a quo warranto action previously had, the respondents, W. D. Koon and Mrs. W. D. Koon, were found guilty of criminal contempt of the Supreme Court of Missouri. A fine of \$25,000 was imposed for such contumacious conduct. The relevant portion of the opinion in the case mentioned reads as follows:

"Their disobedience of our judgment in the quo warranto case is punishable as criminal contempt. * * * In view of our conclusion that respondents are subject to punishment as and for a criminal contempt, we next consider that phase of this proceeding. Sentences for criminal contempt are punitive in nature. Such punishments must vindicate

the court's authority to have its mandates respected. * * * We are of the considered opinion that under the principles of law involved and under the instant facts and circumstances the respondents should pay a fine of \$25,000."

It is the fine mentioned in the quoted portion of the judgment which has now been deposited with you in your official capacity as Treasurer of the State of Missouri.

Generally speaking, moneys coming into the state treasury are to be deposited in the general revenue fund. However, certain constitutional and statutory provisions may vary this ordinary method for the handling of such receipts, and we therefore deem it advisable to consider such of these as may be thought pertinent to a determination of the matter now under consideration.

It is our belief that the disposition of the fine imposed in the proceeding for criminal contempt should be controlled by the provisions of Section 7 of Article IX of the Constitution of 1945. The portion of such constitutional provision considered germane to the matter under consideration reads as follows:

"* * * the clear proceeds of all penalties, forfeitures and fines collected hereafter for any breach of the penal laws of the State, * * * shall be distributed annually to the schools of the several counties according to law."

If the punishment imposed upon the respondents in the cause referred to be considered a "penalty, forfeiture or fine" collected for a breach of the "penal laws" of the state, then the constitutional provision will control its disposition.

In the construction of constitutions, equally as well as in the construction of statutes, words and phrases are to be taken in their usual and ordinary meaning, unless such words and phrases have acquired a technical meaning prior to their incorporation in such constitution. This rule was declared by the Supreme Court of Missouri in *State ex rel. v. Railroad*, 263 Mo. 689, 1. c. 696, wherein it was said:

" * * * It is fundamental that in construing the language of a Constitution the words used, unless they are technical, are to be understood in their usual and ordinary sense. (Cooley's Con. Lims. (7 Ed.) 92.)"

Applying this rule to the constitutional provision quoted supra, we find that the term "penal laws" as used therein is one which has acquired such a technical meaning. We direct your attention to State ex rel. v. Warner, 197 Mo. 650, l. c. 659, wherein the Supreme Court of Missouri adopted approvingly the definition of this term found in Huntington v. Attrill, 13 Sup. Ct. 224, 146 U. S. 657, 36 L. Ed. 1123, in the following language:

"Penal laws, strictly and properly, are those imposing punishment for an offense committed against the State, and which, by the English and American constitutions, the executive of the State has the power to pardon. Statutes giving a private action against the wrongdoer are sometimes spoken of as penal in their nature, but in such cases it has been pointed out that neither the liability imposed nor the remedy given is strictly penal."

This definition is in accord with the great weight of authority, according the same definition to the term, cited in 31 Words and Phrases, Perm. Ed., pages 585-587, inclusive.

You will note that this definition requires the offense against the public to be one which is subject to the pardoning power of the chief executive. Under the Constitution of Missouri of 1945, the pardoning power is vested in the Governor. It is found as Section 7 of Article IV, reading as follows:

"The governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper, subject to provisions of law as to the manner of applying for pardons. The power to pardon shall not include the power to parole."

It appears from this constitutional provision that the pardoning power of the Governor extends to all offenses except those specifically enumerated, that is to say, treason and cases of impeachment.

It has been held by the Supreme Court of Missouri that contempt of court is a criminal offense and that conviction therefor is similar in characteristics to a conviction for any other criminal offense. We quote from *In Re Shull*, 221 Mo. 623, 1. c. 627:

"Contempt of court is 'a specific criminal offense and a fine imposed is a judgment, in a criminal case. The adjudication is a conviction, and the commitment in consequence thereof is execution.' (Church on Habeas Corpus (2 Ed.), sec. 308; Ex parte Kearney, 7 Wheat. 38.) * * *"

From this decision, we are led to the belief that the pardoning power of the Governor extends to convictions for criminal contempt. Such being the case, a fine imposed as punishment upon conviction of criminal contempt is a "penalty, forfeiture and fine" collected for a breach of the "penal laws" of the state.

CONCLUSION

In the premises, we are of the opinion that the money now on deposit in the state treasury, arising from the fine imposed upon the respondents in the case of *State ex inf. Attorney General vs. W. D. Koon and Mrs. W. D. Koon*, is to be held by the State Treasurer for distribution to the schools of the several counties as provided by law.

Respectfully submitted,

WILL F. BERRY, Jr.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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