

JUSTICES OF THE PEACE - Powers to grant stays of execution can
commute fines to imprisonment

August 16, 1937

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Honorable James L. Williams
Sheriff, Jackson County
Kansas City, Missouri

Dear Sir:

We have your request of August 4, 1937, which
is as follows:

"In accordance with the offer in
your letter of August 3rd, stating
that you would be pleased to render
an opinion relative to the rights
and powers of the justice of the
peace to grant stays of execution
or commutation of sentence, I wish
to advise that I would be greatly
pleased to have such an opinion
from your office."

I.

Power of justice of peace
to grant stay of execution

Section 3739, R. S. Missouri, 1929, authorizes
a justice of the peace to grant a stay of execution for any
offense where the punishment has been fixed at a fine or
imprisonment in the county jail, or workhouse, or by both
a fine and imprisonment. This stay of execution must be
for a definite period of time to be fixed by the justice
"not to exceed six months". This statute merely affords

temporary relief, but under no circumstances may the stay of execution exceed a period of six months. The term "stay of execution" means the temporary suspension of the judgment. State ex rel Gray v. Hennings, 185 S. W. 1153, 194 Missouri Appeal 545. It means that during the term for which the "stay of execution" is issued, that no execution can issue on the judgment. Brown v. National Bank of Shawnee, 271 Pacific 833, 133 Oklahoma 173. At the expiration of the stay of execution the defendant must surrender himself in execution. The justice of the peace has authority to grant one stay of execution for the total of six months, but has no authority to grant a second stay of execution suspending the judgment for any length of time beyond the period of six months.

If the defendant is confined in jail, he may apply to the court or judge of the court having jurisdiction of appeals from justices of the peace in criminal cases for parole, Section 3814, R. S. Missouri, 1929. Whenever any person is confined in jail under a judgment of a justice of the peace, the circuit or criminal courts may grant a parole to such person, which parole may be terminated at any time by the court granting it, Section 3810, R. S. Missouri, 1929. Such persons on parole may obtain an absolute discharge in six months. The parole shall not be continued for a longer period than two years, Section 3817, R. S. Missouri, 1929.

CONCLUSION

It is therefore the opinion of this office that a justice of the peace may grant a stay of execution to persons convicted in justice courts, which stay of execution, or stays of execution, may not exceed the total period of six months.

II.

The powers of justices of the peace to commute sen- tences

Section 3726, R. S. Missouri, 1929, provides that whenever any person or convict shall be sentenced to imprisonment in the county jail, or to pay a fine, he shall be imprisoned until the sentence is fully complied with and all costs paid. Section 3727, R. S. Missouri, 1929, provides:

"When any person is held in custody or imprisoned for a fine imposed for a criminal offense, as specified in the last section, the court in which the cause was tried; or the judge thereof in vacation, on the petition of the prisoner for that purpose, shall sentence him to imprisonment for a limited time, in lieu of the fine; and at the expiration of such time, the prisoner shall be discharged on the payment of costs, or obtaining his discharge in the manner in the next sections provided."

It does not specifically appear as to whether or not the above statute would apply to the authority of a justice of the peace. However, the answer is found in Section 3441, R. S. Missouri, 1929, in the following language:

"When any person shall be unable to pay any fine and costs assessed against him, the justice shall have power, * * * to commute such fine and costs to imprisonment in the county jail for a period of time not exceeding one day's imprisonment for every \$2.00 of said fine and costs, nor less than one day's imprisonment for every \$10.00 of such fine and costs."

Section 8 of Article V of the Constitution of Missouri, grants to the Governor the power to grant reprieves, commutations and pardons. The above statute authorizing a justice of the peace to grant a commutation is not in violation of the Missouri Constitution, ex parte Parker 106 Missouri 551. However, in obtaining commutation the statutes providing therefor must be strictly complied with. Ex parte Secrest 32 S. W. (2d) 1085, Workman v. Turner, 283. S. W. 61.

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CONCLUSION

It is, therefore, the opinion of this office that a justice of the peace may grant a commutation of a fine to a fixed number of days in jail at the rate of not less than \$2.00 per day, nor more than \$10.00 per day.

Respectfully submitted,

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APPROVED:

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