

A defendant generally commences to serve his sentence of imprisonment when he is in fact in prison pursuant to the terms of the judgment. The Supreme Court of Indiana has cited with approval the Supreme Court of South Carolina as follows:

“* * * ‘The reasoning of the cases first cited we think sophistical, because it rests upon the false assumption that a sentence necessarily begins to run and to be satisfied the moment it is pronounced. The execution of a sentence may be postponed by appeal, by escape and by other causes, but the time of delay in the execution is not counted as a part of the time of imprisonment fixed by the sentence. * * * The sentence is satisfied, not by the lapse of time after it is pronounced, but by the actual suffering of the imprisonment imposed by it.’ State v. Abbott (1910), 87 S. C. 466, 70 S. E. 6, 33 L. R. A. (N. S.) 112, Ann. Cas. 1912B 1189. * * *”

Egbert v. Tauer, Mayor (1922), 191 Ind. 547, 553, 554.

Therefore, in answer to your fifth question, it is my opinion that the Municipal Court of Marion County, Indiana, does not have authority to suspend the sentence and place the defendant on probation either by (a) written order, or (b) verbal directions to the sheriff to release the defendant if the defendant has in fact commenced to serve his sentence of imprisonment.

OFFICIAL OPINION NO. 59

June 28, 1945.

Hon. Otto K. Jensen,
State Examiner,
State House,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of your letter of May 14, 1945 asking my official opinion on the following question:

"I would like your official opinion on the following question:

"1. Should the certificates of indebtedness to be issued by the City of East Chicago under the provisions of Section 1 of Chapter 89 of the Acts of 1939 be advertised and sold at public sale under the provisions of Chapter 78 of the Acts of 1943, or may such certificates of indebtedness be issued directly to the holders of the Barrett Law bonds and coupons on which the city has an obligation as provided by Chapter 89 of the Acts of 1939?"

The provisions of section 1 of chapter 89 of the Acts of 1939, page 490, concern the issuance of certificates of indebtedness to the holders of Barrett Law bonds by cities which have become liable for the payment of such bonds by reason of the collection of special assessments and either the loss or misapplication of the funds so collected. This act was passed following the case of *Read v. Beczkiewicz* (1939), 215 Ind. 365 wherein the court held that the cities which issued such bonds were primarily liable thereon with the condition that such liability was limited to the amount collected by way of special assessments.

The court there called attention (page 388) to the fact that the levy of a current tax to pay the city's obligations would undoubtedly increase the tax rate, but held that this was no excuse for non-payment. The Act of 1939 sought to meet this situation by the issuance of certificates of indebtedness to the bondholders upon presentation of their bonds and the levy of a limited annual tax to pay such certificates. It must be noted that section 1 of chapter 89 does not contemplate the issue of certificates except in each individual case where a bondholder presents his bond and in such event contemplates that the certificate be in the amount due on that particular bond. In other words each certificate is individually issued upon the happening of a particular event; that is, the presentation of a bond and a demand for payment. Certificates are not issued in the aggregate of all or any portion of outstanding bonds. That situation is covered by section 2 of chapter 89 with which we are not here concerned.

Thereafter, the Legislature enacted chapter 178 of the Acts of 1943 appearing at page 538. This is a general act which

requires the sale at public auction of all obligations issued by or in the name of any city except obligations payable in the year they are issued, "obligations issued in anticipation of the collection of delinquent taxes" and obligations issued in anticipation of the collection of frozen bank deposits.

Since *Read v. Becziewicz*, *supra*, held that special assessments were taxes, it might be contended that certificates of indebtedness are obligations issued in anticipation of the collection of delinquent taxes, but that is only partly true as chapter 89 of the Acts of 1939 covers also those cases where the special assessments have been already collected and the money diverted or lost.

It is submitted that chapter 89 of the Acts of 1939 is a specific act while chapter 178 of the Acts of 1943 is a general act which does not impliedly repeal the specific act, but that the specific act is an exception to such general act. Thus it was held in *Peoples T & S Bank v. Hennessey* (1938), 106 Ind. App. 257, 275:

"A construction which will work an implied repeal is to be avoided if that can be done on any reasonable hypothesis * * *.

"A later statute, general in its terms, and not expressly repealing an earlier statute, will not ordinarily affect the special provisions of such earlier statute. The reason for the application of this rule is that, in passing a special act, the Legislature has its attention directed to the special case which the act was made to meet, and it will not be considered that in passing a later general act it had the special circumstances in mind which induced the passage of the provisions of the special act."

See also:

- Million v. Metropolitan C. I. Co.* (1930), 95 Ind. App. 628, 637;
- Knox County Council v. McCormick* (1940), 217 Ind. 493, 514;
- C. C. C. & St. L. R. Co. v. Blind* (1914), 182 Ind. 398;
- Straus Bros. Co. v. Fisher* (1928), 200 Ind. 307, 316.

Moreover, section 6 of chapter 178 of the Acts of 1943 specifically exempts from its operation those cases where refunding bonds are to be issued and exchanged in amounts of less than \$5,000.00. It has been already pointed out that chapter 78 of the Acts of 1939 contemplates individual issuance of certificates of indebtedness in each case where a special assessment bond is presented for payment. The aggregate amount of such certificates of indebtedness cannot ordinarily be determined as the assessment bonds may or may not be presented and demand made for certificates. Nor can the amount of such individual certificate be ascertained except upon a determination of liability upon the particular bond presented. Chapter 178 of the Acts of 1943 can be therefore reasonably construed as being not applicable to the issuance of a certificate of indebtedness for the refunding of a special assessment bond in an amount of less than \$5,000.00 and practically all special assessment bonds are issued in denominations considerably less than that figure.

I am, therefore, of the opinion that, where a certificate of indebtedness is issued in exchange for a special assessment bond under the provisions of section 1 of chapter 89 of the Acts of 1939, it is not necessary that such certificate be advertised and sold under the provisions of chapter 178 of the Acts of 1943 and that such certificates may be issued directly to the holders of the Barrett Law bonds and coupons upon which the city has become liable. This opinion is not to be construed as being applicable to section 2 of said chapter 89 which is not here in question.

OFFICIAL OPINION NO. 60

July 6, 1945.

Hon. Clarence E. Ruston,
State Examiner,
State House,
Indianapolis, Indiana.

Dear Sir:

I acknowledge receipt of the letter of your predecessor under date of May 15, 1945, in which is asked my official opinion upon the following proposition: