

OFFICIAL OPINION NO. 10

February 23, 1945.

Mrs. Marian F. Gallup, Superintendent,
Indiana Woman's Prison,
Indianapolis, Indiana.

Dear Mrs. Gallup:

Your letter of February 5, 1945, received requesting an official opinion on the following question:

"When women come here with a definite time plus fine and costs, we evaluate the fine and costs at the rate of a dollar a day, and set it up as days on our books. A woman serving 6 months, \$500.00 fine and \$11.00 costs, has that figured as 180 days plus 511 days. When a woman serves out fine and costs, is it still taxed against her as cash on the home town records, and will it appear as a lien against title to property?"

Section 9-2227 Burns' 1942 Replacement, same being Section 302, Chapter 169, Acts 1905, provides as follows:

"Any person imprisoned for failure to pay or replevy any fine or costs may be ordered to be discharged by the court, or by the judge thereof, after being imprisoned one (1) day for every dollar of the fine and costs, if it appears by satisfactory proof that such person is unable to pay or replevy the same; but execution may issue against the property of the defendant as in case of other judgments."

Section 9-2226 Burns' 1942 Replacement, same being Section 301, Chapter 169, Acts 1905, provides as follows:

"Upon a judgment for a fine and costs, execution shall be against the property of the defendant, served and returned in the same manner as in civil actions."

Section 9-2222 Burns' 1942 Replacement, same being Section 297, Chapter 169, Acts 1905, provides as follows:

"When the defendant is adjudged to pay any fine and costs, the court shall order him to be committed

to the jail of the county until the same are paid or replevied. Such judgment shall be without relief from valuation or appraisement laws.”

In an annotation on this question appearing in 49 A. L. R. 392 to 397, it is apparent the different states are not in accord in their rulings on this question. This is due to some extent to the different wording of the statutes on this question in each of the states. On page 394 of the annotation the case of *Tuley v. Logansport* (1876), 53 Ind. 508, and *Flora v. Sachs* (1878), 64 Ind. 157 are cited. An examination of these cases reveals that an older Indiana statute was then in effect which provided that the defendant work out the fine and costs at the rate of seventy-five cents (75c) per day, and concluded with the provision “and upon the full payment, as aforesaid, of judgment and costs, such defendant shall be fully discharged.”

In the case of *Murphy v. State* (1926), — Or. —, 250 Pacific 834, 49 A. L. R. 384 at page 386, the court held the serving of the fine and costs satisfied the same stating the statute “does not, however, authorize the issuance of an execution, or the enforcement of such a judgment after the same has been satisfied either by payment or imprisonment for the required time.” However, an examination of the present Indiana statute, same being Section 9-2227 Burns’ 1942 Replacement, *supra*, shows that provision is made for the serving of the fine and costs by a defendant at the rate of one dollar (\$1.00) per day, and after that time the court may order the discharge of such defendant if it then appears he is unable to pay or replevy the same. This is equivalent to saying such serving of such days in payment of such fine and costs have not satisfied the same. It is pertinent also to observe that after making provision as aforesaid the statute further provides “but execution may issue against the property of the defendant as in case of other judgments.” This would be construed to mean that after the aforesaid laying out of the fine and costs had taken place, execution may issue against the property of the defendant as in the case of other judgments. A careful examination does not reveal that this statute has ever been passed upon by the Indiana Supreme Court on the particular question presented.

In Watson's McDonald's Treatise, Indiana Justices Practice, Fifth Edition (1924), Section 1, Page 811, is found the following statement:

"The release of the defendant from jail does not relieve him from the payment of the fine and costs. (Citing the three above quoted statutes.) At any time that it is probable the defendant could be made to pay the fine and costs, the justice should issue an execution against his property. There is, of course, no exemption against such an execution, or any relief from valuation or appraisement laws."

McDonald's Treatise, Fundamentals of Indiana Jurisprudence, Lowe's Revision, Ninth Edition (1936), Section 1, Page 811, repeats the foregoing statement in support of such proposition. It is to be further noted that prior to making the foregoing statement each of said authorities announced the rule that the failure of the defendant to pay such fine and costs, or to replevy the same, requires that the defendant serve such fine and costs at the rate of one dollar (\$1.00) per day.

I am of the opinion that under the provisions of the above statute the fact that a prisoner may serve out the commitment of fine and costs at the rate of one dollar (\$1.00) per day does not relieve the prisoner's property from the lien of such fine and costs.

OFFICIAL OPINION NO. 11

February 26, 1945.

Hon. Robert B. Hougham, Executive Secretary,
Indiana State Teachers' Retirement Fund Board,
334 State House,
Indianapolis, 4, Indiana

Dear Sir:

Your letter of February 6, 1945, received requesting an opinion on the following:

"The question has arisen as to the status of employees of city libraries in which the board of school trustees