PUBLIC SAFETY, DEPARTMENT OF: Whether sentence may be suspended in arson cases. April 19, 1933.

Mr. Al G. Feeney, Director,
Department of Public Safety,
State of Indiana.

Honorable Sir:
I have before me your request of April 17, 1933, for an opinion upon the question of whether or not sentences may be suspended in arson cases.

Section 2341 of Burns' Annotated Indiana Statutes, Supplement of 1929, provides:

"2341. Powers to suspend sentence of and parole prisoners in certain cases—Probation Clerks. 1. The several circuit and criminal courts and the city and municipal courts in the cities of the first and second class of this state shall have power, in any case where any person shall have been convicted of a felony or misdemeanor, or shall have entered a plea of guilty to a charge of felony or misdemeanor, upon the entry of judgment of conviction of such person, to suspend such sentence and parole such person, by an order of such court, duly entered of record as a part of the judgment of the court in such case, except the crimes of murder, ARSON, burglary, rape, treason, kidnapping, and a second conviction for robbery * * *." (Our italics and capitals.)

This phase of the section of the statute is mentioned in the decision in Zell v. State, 189 Ind. 433 at 438, in such a way as to indicate that the court felt that the lower court had no power to suspend sentence and parole defendant when convicted of one of the crimes specifically mentioned in the said section of the statute.

It would appear, then, that sentence can not be suspended and the defendant paroled where the conviction, or the plea of guilty, is upon a charge of the crime of arson.