
October 6, 1933.

Hon. Wayne Coy,
Under Secretary,
Executive Department,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter of September 28, 1933, attaching two petitions for remission of forfeiture addressed to the governor of Indiana by one Henry Hepler. You ask whether or not the governor may legally grant the prayer of said petitions.

Each petition is verified and each contains an allegation of facts and law substantially as follows: that petitioner became surety on a continuing recognizance given by one Leslie Powell, as principal, on May 11, 1927, upon the latter's arrest upon a criminal charge; that the trial of said charge was set for February 9, 1928, and the defendant Powell failed to appear on said day; that the recognizance was declared forfeited and judgment of forfeiture entered against said principal and the sureties on the same day, without any suit having been brought on said recognizance by the prosecutor, as provided by section 2194, Burns Annotated Indiana Statutes, Revision of 1926, and without any written notice to the sureties, as provided by section 2 of chapter 132, Acts of 1927; that the petitioner, as surety, had no notice of the forfeiture and no opportunity to defend, and that consequently, the judgment on the forfeiture is void.

For the purposes of the question presented by your inquiry, it is not material whether section 2194, supra, or chapter 132 of the Acts of 1927, controlled the procedure for forfeiture of the recognizance bonds in question and judgment thereon. It is my opinion, that if the facts are substantially as alleged in the petitions, the judgments of forfeiture probably were void under either statute.

In any event, the governor's action must be based upon the showing made in the petitions. Upon this showing, the petitions themselves defeat the object sought to be attained; for it is the petitioner's contention that the judgment of forfeiture in each instance is void. He alleges a total lack of notice to
the petitioner of the forfeiture proceedings, and a lack of jurisdiction over the person of the petitioner. Either allegation, if true, would render the judgment void.

Brooks v. Allen, 62 Ind. 401;
Pease v. State, 74 Ind. App. 572.

The rule is well settled that a defendant must be accorded an opportunity to present his defense.

Cavanaugh v. Smith, 84 Ind. 380.

Upon the showing made in each petition, the respective judgments of forfeiture must be considered as nullities, the effect being as though such judgments had never been entered.

Furness v. Brummitt, 48 Ind. App. 442;
34 Corpus Juris, 509, 510.

Forfeitures can only be remitted by the governor after judgment has been entered declaring the forfeiture.

State v. Rowe, 103 Ind. 118.

It is my opinion, that upon the showing made in the petitions in question, the governor has no authority to grant the relief sought in either case.

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**ADJUTANT GENERAL:** Whether canteens in national guard armories may sell 3.2 beer without license.

October 6, 1933.

Hon. Elmer F. Straub,
The Adjutant General,
State Capitol Building,
Indianapolis, Indiana.

My dear General:

I have at hand your request for an official opinion as follows:

"Is it possible for canteens in the national guard armories throughout the state to sell 3.2 beer without the purchase of a license? Canteens operated in Indiana national guard armories throughout the state are operated in strict accordance with war department and national guard regulations."