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May 27, 1966

DEPARTMENT OF LAW LETTER OPINION NO. 66-21-L (R-66)

REQUESTED BY: THE HONORABLE SAMUEL P. GODDARD
Governor of Arizona

QUESTIONS:

1. Are the penalties prescribed in A.R.S. § 18-162, relating to littering of State highways, mandatory in the event of conviction?
2. What is the area of discretion given to Justices of the Peace and Magistrates as to levying of fines or jail sentences under this statute?

ANSWERS:

1. Yes, as qualified.
2. See body of opinion.

A.R.S. § 18-162 prescribes the penalties for littering the highways:

"A. A person who dumps, deposits, places, throws or leaves refuse, rubbish, debris, filthy or odoriferous objects, substances or other trash upon a state or county highway, road or other public thoroughfare or the right of way therefor, or within twenty yards of a state or county highway, road or other public thoroughfare, is guilty of a misdemeanor, punishable upon conviction by a fine or not less than ten nor more than one hundred dollars, by imprisonment for not less than five nor more than thirty days, or both."

The above cited statute clearly outlines the acts which will constitute the misdemeanor.

Peterson v. Flood, 84 Ariz. 256, 326 P.2d 845 (1958), held that the power of the court to suspend imposition of sentence and place a defendant on probation extends to justice courts within the confines of A.R.S. § 13-1647, which provides:

"A. If it appears that there are circumstances in mitigation of the punishment, or that the ends of justice will be subserved thereby, the court may, in its discretion, place the defendant upon probation in the following manner:

"1. The court may suspend the imposing of sentence and may direct that the suspension continue for such period of time, not exceeding the maximum term of sentence which may be imposed and upon such terms and conditions as the court determines, and shall place such person on probation, under the charge and supervision of the probation officer of the court during such suspension.

"2. If the sentence is to pay a fine, and the defendant is imprisoned until the fine is paid, the court, upon imposing sentence, may direct that the execution of the sentence of imprisonment be suspended for such period of time, not exceeding the maximum term of sentence which may be imposed and on such terms as it determines, and shall place the defendant on probation, under the charge and supervision of the probation officer during such suspension, for the purpose of giving the defendant an opportunity to pay the fine. Upon payment of the fine, the sentence shall be satisfied and the probation cease.

* * *

"D. The court may at any time during the period of probation revoke or modify its order of suspension of imposition or execution of sentence. It may at any time when the ends of justice will be subverted thereby, and when the good conduct and reform of the person so held on probation warrants it, terminate the period of probation and discharge the person so held, and in all instances, if the court has not seen fit to revoke the order of probation and impose sentence or pronounce sentence, the defendant shall, at the end of the term of probation, be discharged by the court."

Construing A.R.S. §§ 18-162 and 13-1647, a Justice of the Peace or a Magistrate would, therefore, have the following four alternatives to follow in a conviction under § 18-162:

1. He could impose a fine of from \$10.00 (minimum) to \$100.00 (maximum).
2. He could impose a sentence of from 5 through 30 days.
3. He could impose a combination of fine and sentence from the minimum through the maximum or somewhere in between.
4. Finally, he could suspend the sentence, when mitigating circumstances appear.

There is no intention expressed by the Legislature in A.R.S. § 18-162 which indicates their desire to limit the power

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of the Justice of the Peace or Magistrate to suspend the sentence
if he so desires.

Respectfully submitted,


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The Attorney General

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