

MAINE STATE LEGISLATURE

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Mr. Fisher - June 27, 1917
Mr. Sturgis - June 30(?), 1917

To Commissioners of Inland Fisheries and Game (Mr. Austin)
Re: Imprisonment for Non-payment of Fines

. . . We understand your question to be as follows: If the statute provide as in Section 36, Chapter 33, for a fine only as a penalty for violating the game laws of this state, what procedure can be entertained to enforce the payment of the fine providing the offender is unable or unwilling to pay.

At common law Courts have authority to imprison offenders upon non-payment of a fine and the proper sentence to be imposed where a fine only is provided is a sentence to pay the fine "and stand committed until the sentence be performed."

The exact question has not, so far as we are able to learn, ever come before the Courts of this state but the states of Massachusetts, Minnesota, Illinois and New Jersey have all passed upon this question and are united in stating that the power to imprison is inseparably connected with the power to fine.

We have noticed Section 47, Chapter 137 of the Revised Statutes. The authority given to sentence to imprisonment in this section is simply in addition to the common law authority of the Judges to commit a person convicted to jail for non-payment of the fine and not in limitation of that authority and we advise you that if a person is convicted for violation of Chapter 33, Section 36 and then does not pay the fine imposed, he can be imprisoned for non-payment of the fine.

The question of the age of the offender would in some cases have a bearing on whether or not he could be convicted of committing the crime charged, but unless a person is convicted his age would have no effect upon the authority of the Court to sentence him except in those cases where the minor could be sentenced to the State School for Boys or State School for Girls.

Franklin Fisher
Assistant Attorney General

(Mr. Fisher sent a copy of the above to the Attorney General (Sturgis) at Portland and received the following reply:

. . . I think your conclusions are correct. I am satisfied that it has been the long established custom of our courts to commit upon default of payment of fine and costs by sentence. Our Court in Downing v. Herrick, 47 Maine 462, apparently recognized the right of Magistrates to commit for default in payment of fine and costs properly imposed. This case presented the issue as to the authority of a Magistrate to impose sentence of payment of costs of prosecution. The case hinged on the question of the authority of the Justice to impose payment of costs and the question of imprisonment in case of

default of such payment was not argued. It may be presumed, however, that if there had been any question in the minds of the Court as to the legality of the order of imprisonment the same would have been discussed in the opinion.

The real authority for commitment in default of payment of a fine or costs lawfully imposed is undoubtedly to be found in Sec. 50 of Chap. 137 R.S., wherein provision is made that any convict sentenced to pay a fine or costs and committed for default thereof, who is unable to pay the same may be liberated after thirty days upon certain conditions. Massachusetts has a statute similar in substance to Sec. 50, and in Harris v. Commonwealth 23 Pick. 280 the Court says that such a statute carries the implication that a person sentenced to pay a fine may be committed. The provision for the discharge of a person committed for non-payment of a fine indicates that there is authority to so commit, otherwise, of course, there would be no demand for such a remedial provision. Further, this provision in our statute says that a person so committed may be liberated after "thirty days from his commitment," and apparently, by custom, it has been accepted as the proper imprisonment which the Magistrate may order in case of default in payment of any fine or costs imposed.

I think it proper to advise Mr. Austin that the Magistrate has authority to impose fine and costs as provided by the statute and to order that in default thereof the respondent shall be committed to the County Jail. I think you will find that the ordinary Mittimus based upon the sentence of fine and costs usually contains the provision that the respondent fails and refuses to comply with said sentence and is therefore committed to the jail to be kept until he performs said sentence or until he be otherwise discharged by due course of law. Of course there is the inherent power and authority in Courts at Common Law to enforce payment of fines imposed, by imprisonment. This has been construed not to be a part of the imprisonment nor to be imprisonment for debt, but is part of the inherent power of courts to enforce their orders, decrees, and mandates. I have supplemented your investigation with a somewhat hurried one of my own and perhaps you had better attach my letter to the copy of opinion given Mr. Austin that the two together may remain on our files for future reference.

Guy H. Sturgis
Attorney General