

MAINE STATE LEGISLATURE

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November 2, 1944

H.C. Crawford, Municipal Auditor

Audit

Abraham Breitbard, Deputy

Attorney General

Imposition of probation for payment of fines and costs.

With reference to your memorandum of Nov. 2nd on the above subject, the answers which follow herewith are applicable to the hypothetical cases 1 and 2 since the breach, or violation, of the probation in either case must occur within the period of time fixed for the payment of the fine and costs.

- (1) Where the breach occurs within the probation period, the offender may be brought before the Court for the revocation of the probation and the imposition of the original sentence even though the period of probation has expired. The important event is the violation within the probation period.
- (2) Where a sentence is imposed of a fine and costs, and the respondent is put on probation and time is fixed for the payment of the fine and costs, the condition is imposed on the respondent and it is he who must fulfill the terms of the probation. The probation officer does not act as a collecting agent for the county or the state. Thus, he has no obligation so far as the collection of the fine and costs is concerned except to receive it if it is paid to him, and to turn it into the treasury of the county in accordance with R.S. c. 147, §13, amended 1943, c. 269. When a person is sentenced to pay a fine and costs and he is committed in default of the payment thereof, §42 of said chapter provides that if he is unable to pay the same, he may be liberated by the sheriff after 30 days by giving his note for the amount due to the treasurer of the same county. Thus, the duty of a probation officer would be, on failure by the offender to pay the fine and costs, to bring him before the Court so that he may be committed and held in accordance with said section. Under this section, payment of the fine and costs at any time by the offender would entitle him to liberation.
- (3) In view of what I have stated in the preceding paragraph, I can see no reason why the probation officer would not be justified in accepting the payment of the fine and costs, after the time fixed by the Court, since the offender would be entitled to his immediate release if he was committed and such payment was made by him at the jail, although I think that it would be good policy for the probation officer to inform the Court that the offender is tendering the payment of the fine after the time fixed by the

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presiding judge and obtain its approval for the action of the
probation officer.

Abraham Breithard
Deputy Attorney General

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