

TO: Lester K. Fryer, Chairman, Local Government Committee
FROM: John H. Broujos, Counsel
SUBJECT: H.B. 2088, P.N. 2746
REF: 16 PS 509

MUNICIPALITY AND LAW AFFECTED: Counties of Third to Eighth Classes

RELATED LEGISLATION: Municipalities such as boroughs and townships do have a similar provision for payment of fine for violation of an ordinance or imprisonment. However, one distinction is that here there is an option of an imposition of a fine or imprisonment for not more than 30 days or both.

The Borough Code provides that upon judgment by summary conviction or by proceedings by summons on default of payment of fine, defendant may be sentenced to jail not exceeding 30 days. The limit on fines is \$300. There is no provision that I have found for imposition of a prison sentence for summary conviction outright. Although it is not necessary for an action of debt as a civil suit to be brought for collection at a penalty, the nature of the fine is a debt and if not obtained by coercion through imprisonment may be obtained through a civil suit. Commonwealth vs Collum, 32 LeLJ 14 1966.

The Second Class Township Code 53 PS 65741 authorizes the Board of Supervisors to prescribe fines not exceeding \$300 which may be collected by suit or summary proceeding. "Upon judgment against any person by summary conviction, or by proceedings by summons on default of payment of fine imposed a defendant may be sentenced to a township lockup not exceeding five days or to a county jail not exceeding 30 days." This clearly seems to provide a right of imprisonment for five days or 30 days.

The Borough Code of 1966 53 PS 48301 specifically states that a violation of an ordinance constitutes a summary offense and prosecution for offense shall be in accordance with the practice in the case of summary offenses. I construe this to establish a procedure for handling the cases as not as a substantive basis for determining the amount of fine or whether sentence of imprisonment can be imposed.

PROVISIONS:

1. Purpose. To impose right of imprisonment in addition to fine.
2. Section 1 (Sec. 509). Provides that any person violating any of the ordinances of the county shall upon conviction at summary proceedings be sentenced to pay fine not over \$300 or to be imprisoned in county jail for not more than 30 days or both.

COMMENT: Sub-paragraph C seems to be redundant in that it provides for fines of \$300 to be collected by suit. The option probably should be in the municipality to both collect by suit or to impose imprisonment on default of payment of fine. In Sub-paragraph C, the \$300 can only be collected by a suit. However Sub-paragraph D does not specifically provide for imprisonment on default of payment of fine, if it was so intended to provide. A line which can be modified to conform to the Second Class Township Code, 53 PS 65741.

COMMENT: Imprisonment cannot be imposed for failure to pay fine where defendant is indigent. This is a case law.

June 16, 1972