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FILE NO. S-966

**CRIMINAL LAW:
Fine as a Condition of Probation
When Judgment on Drug Charge
Is Not Entered**

Honorable Frank K. Yackley
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LaSalle County
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Dear Mr. Yackley:

This is in response to your inquiry regarding section 10 of the Cannabis Control Act (Ill. Rev. Stat. 1973, ch. 56 1/2, par. 710) and section 410 of the Illinois Controlled Substances Act. (Ill. Rev. Stat. 1974 Supp., ch. 56 1/2, par. 1410.) These sections provide that the court may defer judgment upon a first offender who pleads guilty to or is found guilty of a drug related charge and place the person on probation; the drug charge is dismissed after the successful completion of probation.

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You have inquired whether the court may impose a fine as a condition of probation under these sections.

Section 10 of the Cannabis Control Act reads as follows:

"§ 10. Whenever any person who has not previously been convicted of any offense under this Act or any law of the United States or of any State relating to cannabis, or controlled substances as defined in the Illinois Controlled Substances Act, pleads guilty to or is found guilty of violating Sections 4(a), 4(b), 4(c), 5(a), 5(b), 5(c) or 8 of this Act, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon reasonable terms and conditions as it may require. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this Section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of disqualification or disabilities imposed by law upon conviction of a crime (including the additional penalty imposed for subsequent offenses under Section 4(c), 4(d), 5(c) or 5(d) of this Act.) Discharge and dismissal under this Section may occur only once with respect to any person."

Section 410 of the Illinois Controlled Substances Act provides as follows:

"§ 410. Whenever any person who has not previously been convicted under any law of the United States or of any State relating to controlled substances, pleads

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guilty to or is found guilty of possession of a controlled substance under Section 402(b), the court, without entering a judgment of conviction and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions which may include treatment or rehabilitation approved by the Department of Mental Health and Developmental Disabilities. Upon violation of a term or condition, the court may enter a judgment of conviction and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this Section is not a conviction for purposes of this Act or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only one discharge and dismissal under this Section with respect to any person."

"Every person convicted of an offense" is sentenced according to the provisions of the Unified Code of Corrections. (Ill. Rev. Stat. 1973, ch. 38, par. 1005-5-3(a).) The term "convicted" in the Unified Code refers not simply to the entry of a judgment but also refers to a determination of guilt even if such a determination is done without entering a judgment. (Ill. Rev. Stat. 1973, ch. 38, par. 1005-1-5; People v. Goetz, 27 Ill. App. 3d 680.) Thus, the entry of a judgment is not a prerequisite to the application of the Unified Code of Corrections. The sentencing provisions of the Code apply when there is a

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determination of guilt. Hence, section 5-4-1(a) of the Unified Code (Ill. Rev. Stat. 1973, ch. 38, par. 1005-4-1(a)) states that "after a determination of guilt, a hearing shall be held to impose the sentence." (emphasis added.)

Section 10 and section 410 permit the court to place a first offender on probation after a determination of guilt either by a guilty plea or by a finding of guilty. Since the first offender's guilt is determined, he or she is sentenced according to the provisions of the Unified Code. Section 5-6-3 of the Code (Ill. Rev. Stat. 1973, ch. 38, par. 1005-6-3) describes the conditions of probation. That section provides in pertinent part:

"§ 5-6-3. Conditions of Probation and of Conditional Discharge.) (a) The conditions of probation and of conditional discharge shall be that the person:

- (1) not violate any criminal statute of any jurisdiction; and
- (2) make a report to and appear in person before such person or agency as directed by

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the court.

(b) The Court may in addition to other conditions require that the person:

* * *

(2) pay a fine;

* * *

The condition that a person on probation may be required to "pay a fine" means that a fine may be imposed as a condition of probation. In People v. Garrett, 11 Ill. App. 3d at 146-147, it is noted that "under the provision of the Unified Code of Corrections, section 1005-6-3 a fine as a condition of probation may be imposed."

The sentencing provisions of the Unified Code of Corrections must be observed when a first offender is placed on probation under section 10 and section 410 because the probation follows a determination of guilt. Section 5-6-3 of the Unified Code explicitly authorizes the court to impose a fine as a condition of probation. Therefore, it is my opinion that the court may impose a fine as a condition of probation under section 10 of the Cannabis Control Act and

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section 410 of the Illinois Controlled Substances Act.

Very truly yours,

A T T O R N E Y G E N E R A L