

The above bonds are undoubtedly executed pursuant to the provisions of sections 1183 and 1182-3, General Code. These sections provide, in so far as pertinent, as follows:

"Sec. 1183. \* \* \* Such resident district deputy directors shall \* \* \* give bond in the sum of five thousand dollars. \* \* \*"

"Sec. 1182-3. \* \* \* All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their respective positions and such bonds \* \* \* shall be approved as to the sufficiency of the sureties by the director (of highways), and as to legality and form by the attorney general and be deposited with the secretary of state. \* \* \*"

Finding said bonds to have been properly executed in accordance with the foregoing statutory provisions, I have accordingly approved the same as to form, and return them herewith.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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1434.

PRISONER—BOARD OF PAROLE MAY NOT RELEASE LIFE TERMER  
REGARDLESS OF GOOD BEHAVIOR DURING PAROLE.

*SYLLABUS:*

*An absolute discharge or release cannot be granted by the Board of Parole to a life termmer who is out on parole by virtue of the provisions of section 2210-1, even though such prisoner has faithfully observed the terms of his parole.*

COLUMBUS, OHIO, August 21, 1933.

HON. JOHN McSWEENEY, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of a letter from Hon. Leland S. Dougan, Chairman of the Board of Parole, which reads in part as follows:

"Please ascertain from the Attorney General's Office whether or not the Board of Parole has the legal right to give a final release on any inmate in any institution under our jurisdiction that is serving life for any crime which the Board of Parole has a legal right to parole in the first instance."

The following sections and parts of sections of the General Code are pertinent to the question raised by the inquiry of the Board of Parole.

Section 2163 reads in part as follows:

"A person confined in the penitentiary, or hereafter sentenced thereto for a definite term other than life, having passed the entire period of his imprisonment without violation of the rules and discipline, except such as the board of managers shall excuse, will be entitled to the following diminution of his sentence: \* \* \*"

Section 2166, General Code, reads in part as follows:

"Courts imposing sentences to the Ohio penitentiary for felonies, except treason, and murder in the first degree, shall make them general and not fixed or limited in their duration. All terms of imprisonment of persons in the Ohio penitentiary may be terminated in the manner and by the authority provided by law, but no such terms shall exceed the maximum term provided by law for the felony of which the prisoner was convicted, nor be less than the minimum term provided by law for such felony.

Section 2210-1 reads:

"A prisoner serving a sentence of imprisonment for life for a crime other than treason or murder in the first degree, or a prisoner sentenced for a minimum term of imprisonment longer than fifteen years, shall become eligible for parole at the expiration of fifteen years' imprisonment, subject to the provisions of law governing diminution of sentence for good behavior in prison. The above provisions shall apply to prisoners sentenced before or after the taking effect of this act."

Section 2211-4 provides in part:

"All powers and duties vested in or imposed by law upon any other officers, boards or commissions of the state, excepting the governor, with respect to recommendation, grant, or order of pardon, commutation of sentence, parole, reprieve, reimprisonment, or release of persons confined in or under sentence to any of the penal and reformatory institutions of the state excepting the boys' industrial school and the girls' industrial school are hereby transferred to, vested in and imposed upon the board of parole and shall be exercised in accordance with the provisions of this act."

Section 2211-5 reads in part:

"The board of parole shall have the power to exercise its functions and duties in relation to parole, release, pardon, commutation, or reprieve upon its own initiative or the initiative of the superintendent of a penal or reformatory institution."

Section 2211-6 reads:

*"Subject to the limitations imposed by law, the board of parole shall have full, continuous and exclusive power to determine the time when,*

the period for which and terms and conditions in accordance with which any prisoner now or hereafter confined in a penal or reformatory institution may be allowed to go upon parole outside the premises of the institution to which he has been committed, assigned or transferred. All prisoners on parole shall remain in the legal custody of the department of public welfare. The concurrence of at least three members of the board at a meeting of the board shall be necessary for the parole or release of a prisoner. *When a paroled prisoner shall have performed all the terms and conditions of his parole the board may finally release him.*" (Italics the writer's.)

The question raised by the letter of the Board of Parole is whether a person sentenced to a penal institution for life and eligible for parole by virtue of the provisions of section 2169 and section 2210-1, General Code, may be granted a final release when such prisoner has performed all of the terms and conditions of his parole.

The parole law, sections 2211 to 2211-9, inclusive, places in the Board of Parole the power to determine when, if at all, a prisoner is entitled to parole, subject, however, to the provisions contained in sections 2169, 2210 and 2210-1, General Code. The words "parole" and "final release" have separate and distinct meanings in criminal law. A parole is merely a release from the actual confines of the prison bounds without the suspension of the running of the prisoner's sentence. See *Crooks vs. Sanders*, 115 S. E. 760 (S. C.); *Ex parte Prout*, 86 Pac. 275 (Idaho); *Woodward vs. Murdock*, 124 Ind. 439; and *Ex parte Casey*, 115 Pac. 1104 (Calif.) Also section 2211-9. Contra, *State vs. Yeates*, 111 S. E. 337 (N. C.); *Commonwealth, ex rel., vs. Minor*, 241 S. E. 856 (Ky.); *Ex parte Mounce*; 269 S. W. 385 (Mo.).

The absolute discharge or release of a prisoner before the expiration of his maximum term of imprisonment, either while in confinement or out on parole, is a remission of the remaining portion of his sentence. Thus in the case of *Orme, et al., vs. Roger*, 260 Pac. 199 (Ariz.), it was held that "discharge is more than a parole in that it releases the prisoner from any further imprisonment for the same offense, no matter what his conduct thereafter, but less than a pardon in that it does not restore his right to vote." See also *People vs. Kaiser*, 205 N. Y. S. 317 and 46 C. J. 1211.

Section 2166, as enacted in 114 O. L. 188, authorizes a remission of a prisoner's term of imprisonment in the Ohio Penitentiary, but specifically provides therein that an indeterminate sentence to the Ohio Penitentiary shall not be terminated until the minimum term of imprisonment fixed by law for the felony has been served. The provisions of sections 2166 and 2211-6 were construed in Opinion No. 106 of the Opinions of the Attorney General for 1933. The discussion relative to the provisions of sections 2166 and 2211-6 is pertinent and reads:

"The phrase 'When a paroled prisoner shall have performed all the terms and conditions of his parole the board may finally release him', contained in section 2211-6, must be construed together with the provisions of section 2166, as enacted in 114 O. L. 188. The provisions of section 2211-6, quoted herein, are limited by the provisions of section 2166 as to when a prisoner sentenced to serve an indeterminate sentence in the Ohio Penitentiary may be given a final release or discharge. Section 2166 specifically provides that all terms of imprisonment of persons in the Ohio Penitentiary 'may be terminated in the manner and by the

authority provided by law, but no such terms shall exceed the maximum term provided by law for the felony of which the prisoner was convicted, *nor be less than the minimum term provided by law for such felony.*' The language contained in that section is so free from ambiguity that there can be but one conclusion and that is that the sentence of a prisoner serving an indeterminate term in the Ohio Penitentiary cannot be terminated by the Board of Parole until he has served either actually or constructively the minimum term of imprisonment provided by law for the felony."

A life sentence is considered a fixed and not a general sentence since the law does not fix a minimum or maximum term for such a sentence. The conclusion that a life sentence is not a general or indefinite sentence is supported by that part of section 2166, General Code, which reads:

"A person confined in the penitentiary \* \* \* for a definite term other than life," etc.

It is well to bear in mind that the provisions of section 2210-1 do not authorize the Parole Board to consider the fifteen year proviso contained therein as a minimum term for a life sentence. In other words, section 2210-1 cannot be construed so as to reduce a life sentence to a sentence of fifteen years to life. See Opinion No. 4455 of the Opinions of the Attorney General for 1932. My immediate predecessor in that opinion said that:

"It cannot be contended that the fifteen year proviso in section 2210-1 makes a sentence for life imprisonment an indeterminate sentence, since that section does not read that in case of a life sentence the minimum term shall be fifteen years. Instead, that section reads that 'A prisoner serving a sentence of imprisonment for life \* \* \* shall become eligible for parole at the expiration of fifteen years' imprisonment."

It was held in that opinion that life termers under the provisions of section 2210-1 were merely eligible for parole at the expiration of fifteen years' imprisonment. It is also to be observed that the provisions of section 2166 relate specifically to indeterminate sentences and do not include definite sentences. The termination of sentences of prisoners serving definite sentences is specifically provided for in section 2163, General Code. A prisoner serving a life sentence is not included within either the provisions of section 2163 or 2166. Judge Day, in the course of his opinion in the case of *O'Neill vs. Thomas*, 123 O. S. 42, decided prior to the amendment of section 2166 in 114 O. L., said that two kinds of sentences in criminal cases could be imposed by the courts in this state, to-wit, definite and indefinite sentences, and that a prisoner serving a definite sentence was entitled to the diminution of his sentence as provided by section 2163, General Code. The only way the Board of Clemency (now the Board of Parole) could affect such a prisoner was by deducting or restoring to him his credits for good conduct. See sections 2164 and 2165. Thus a prison board cannot parole or terminate the sentence of a prisoner serving a definite sentence in the Ohio Penitentiary. Accordingly, only prisoners serving indeterminate sentences in the Ohio Penitentiary, except those prisoners serving life sentences coming within the provisions of sections 2169 and 2210-1, can be paroled or released by the Board

of Parole as provided by sections 2166, 2169 and 2211-6, General Code. The parole and release of prisoners in the Ohio State Reformatory is governed by sections 2132, 2211-4 and 2211-6. See Opinion No. 106 of the Opinions of the Attorney General for 1933.

Sections 2132, 2166, 2169 and 2211-6 must be construed to be in *pari materia* in view of the fact that they relate to the same subject matter. Since the Board of Parole has no authority to parole prisoners serving definite sentences and only has authority to parole prisoners serving indeterminate sentences, except life prisoners coming within the provisions of section 2210-1, it follows that the provisions of section 2211-6, which authorize the Board of Parole to grant final releases to paroled prisoners who have not violated the terms and conditions of their parole, apply only to prisoners serving indeterminate sentences. As previously stated herein, the power to terminate sentences of prisoners in the Ohio Penitentiary is prescribed by section 2166 which relates to indeterminate sentences and for prisoners in the Ohio State Reformatory by section 2132, which also relates to indeterminate sentences. It therefore follows that the provisions of section 2211-6, relating to the release of paroled prisoners, apply only to those sentences which the Board of Parole has the power to terminate as provided by sections 2166 and 2132. This conclusion is supported by the fact that the Board of Parole has no authority to terminate the sentence of a prisoner until he has served the minimum term of imprisonment fixed by law for the felony. Sections 2132 and 2166.

In Opinion No. 106 of the Opinions of the Attorney General for 1933, it was held:

“The Board of Parole has authority to allow an inmate of the Ohio State Reformatory to go out on parole before he has served the minimum term fixed by law for the felony of which the prisoner was convicted. However, the Board of Parole cannot terminate a sentence of such an inmate by granting a final release until he has served, either by actual or constructive imprisonment, at least the minimum term of imprisonment fixed by law for the felony.

The Board of Parole cannot grant a final release to a prisoner sentenced to the Ohio Penitentiary until the prisoner has served, by actual or constructive imprisonment, at least the minimum term provided by law for the felony of which the prisoner was convicted.”

In view of the discussion heretofore had, I am of the opinion that an absolute discharge or release cannot be granted by the Board of Parole to a life termer out on parole, even though such prisoner has faithfully observed the terms of his parole, because the time fixed by the legislature (section 2210-1) making such a prisoner eligible for parole is not the minimum term of his imprisonment.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*