

1400.

PRISONER—TRANSFERRED FROM OHIO STATE REFORMATORY TO OHIO PENITENTIARY, RETAINS STATUS FOR PURPOSE OF PAROLE AND FINAL RELEASE—PAROLE BOARD NOT REQUIRED TO GIVE NOTICE OF HEARING WHEN.

*SYLLABUS:*

1. *A prisoner transferred from the Ohio State Reformatory to the Ohio Penitentiary, by virtue of the provisions of either section 2140 or section 2210-3, retains the status of a prisoner in the Ohio State Reformatory, for the purposes of parole and final release.*

2. *It is not necessary for the Board of Parole, on the transfer of a prisoner from the Ohio State Reformatory to the Ohio Penitentiary, by virtue of the provisions of either section 2140 or section 2210-3, to republish or give again a notice previously published and given by the Board of Parole, as required by section 2211-8, while the transferred prisoner was confined at the Ohio State Reformatory, and where the question of granting a parole to the prisoner at that time had been continued by the Board of Parole to some other definite time.*

COLUMBUS, OHIO, August 15, 1933.

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

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

“Since the new Board has been in office there have been some 100 men transferred from the Ohio State Reformatory to the Ohio Penitentiary.

Our best information is that prior to the new Board, men transferred from the Ohio State Reformatory to the Ohio Penitentiary received benefit for time served at the Ohio State Reformatory but when they entered the Ohio Penitentiary they came under the laws governing inmates at the Ohio Penitentiary and were eligible for hearing for parole accordingly, and not according to rules governing Ohio State Reformatory hearings.

Also we understand that the men once advertised at the Ohio State Reformatory were not required to be re-advertised at the Ohio Penitentiary.

The question we would like to have decided immediately is—How shall the Parole and Record Clerk at the Ohio Penitentiary treat these inmates above mentioned:

1. Regardless of time served and advertisement while at the Ohio State Reformatory, do these inmates have to be readvertised at the Ohio Penitentiary before the Board can take any action on their cases?

2. Do the inmates from the Ohio State Reformatory receive full benefit for time served at the Ohio State Reformatory when treated as inmates on transfer to the Ohio Penitentiary and to be heard as Ohio Penitentiary inmates?”

Section 2140, General Code, reads in part as follows:

“ \* \* \* The Ohio board of administration may so transfer an apparently incorrigible prisoner whose presence in the reformatory appears to be seriously detrimental to the well-being of the institution.”

Section 2210-3, General Code, is pertinent to your inquiry and provides:

“Any prisoner legally sentenced or committed to a penal or reformatory institution may be transferred therefrom to another such institution but he shall continue to be subject to the same conditions as to term of sentence, diminution of sentence and parole as if confined in the institution to which he was originally sentenced or committed.”

It is to be observed that the legislature has expressly provided in section 2210-3 that a prisoner transferred from the Ohio State Reformatory to the Ohio Penitentiary is to be deemed, for the purposes of parole and final release, to be a prisoner of the institution to which he was sentenced and not of the institution to which he was transferred. In other words, the status of a prisoner, for the purposes of parole and final release, is not changed, altered or affected on the transfer of the prisoner, as provided by sections 2140 and 2210-3, from the Ohio State Reformatory to the Ohio Penitentiary. The Board of Parole, in determining whether such a prisoner should go out on parole or be given a final release, must disregard the transfer of the prisoner and consider his case as though he were still incarcerated in the institution to which he was sentenced. Thus, a prisoner transferred from the Ohio State Reformatory to the Ohio Penitentiary, by virtue of either section 2140 or section 2210-3, retains the status of a prisoner in the Ohio State Reformatory for the purposes of parole and final release.

Section 2211-8, General Code, provides:

“At least three weeks before the board of parole grants any parole or recommends any pardon or commutation of sentence, notice of the pendency of such matter, setting forth the name of the person on whose behalf it is made, the crime of which he was convicted, the time of conviction, the term of sentence, shall be sent to the prosecuting attorney and the judge of the court of common pleas of the county in which the indictment against the offender was found; provided, however, that where there is more than one such judge, then the notice shall be sent to the presiding judge of the county. The said notice shall also be published once each week for two consecutive weeks in a newspaper published and of general circulation in said county. In case of an application for the pardon or commutation of sentence of a person sentenced to capital punishment, the governor may modify the requirements of such notification and publication if there is not sufficient time for compliance therewith before the date fixed for the execution of sentence.”

My immediate predecessor, in construing section 2211-8, held, in Opinion No. 3802 of the Opinions of the Attorney General for 1932, that:

“It is not necessary for the board of parole to republish or give again a notice previously published and given by the board of parole as required by section 2211-8, General Code, when the board of parole

continues the date of granting a parole to some other date in the future."

The then Attorney General, in the course of his opinion, said:

"Since the board of parole can consider the question of granting a parole without advising the prosecutor or judge of the committing county of the pendency of that matter and there no longer being any need of advising the prosecutor of the time of the hearing or consideration of that question, it would seem to me that the requirement of section 2211-8, as to the giving and publishing of the notice required therein, is complied with whenever it is given prior to and at least three weeks before the granting of the parole, regardless of whether or not the original hearing on the question of granting a parole has been continued by the board to some other definite time."

In view of the fact that a prisoner transferred, by virtue of either section 2140 or section 2210-3, from the Ohio State Reformatory to the Ohio Penitentiary continues to retain the status of a prisoner at the Reformatory, for the purpose of parole, it follows that such a transfer will not require the Board of Parole to republish or give again the notice required by section 2211-8, where the notice required therein had been previously given by the Board of Parole while the transferred prisoner was confined at the Ohio State Reformatory and the question of granting a parole to the prisoner at that time had been continued by the Board of Parole to some other definite time.

Specifically answering the inquiries of the Board of Parole, I am of the opinion that:

1. A prisoner transferred from the Ohio State Reformatory to the Ohio Penitentiary, by virtue of the provisions of either section 2140 or section 2210-3, retains the status of a prisoner in the Ohio State Reformatory, for the purposes of parole and final release.
2. It is not necessary for the Board of Parole, on the transfer of a prisoner from the Ohio State Reformatory to the Ohio Penitentiary, by virtue of the provisions of either section 2140 or section 2210-3, to republish or give again a notice previously published and given by the Board of Parole as required by section 2211-8, while the transferred prisoner was confined at the Ohio State Reformatory, and where the question of granting a parole to the prisoner at that time had been continued by the Board of Parole to some other definite time.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*