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1. PRISONER—SERVING LIFE SENTENCE IN PENITENTIARY FOR MURDER—CERTIFICATE ISSUED BY GOVERNOR DECEMBER 13, 1932—RESTORED FORFEITED CIVIL RIGHTS—NO PARDON OR COMMUTATION OF SENTENCE—NO LEGAL EFFECT—NONCOMPLIANCE WITH SECTION 2162 GC—NOT AUTHORIZED BY SECTIONS 2161 OR 2162 GC—THEN IN FORCE.
2. PRISONER SERVED MAXIMUM SENTENCE UNDER CONVICTION FOR ARMED ROBBERY—REMAINS UNDER LIFE SENTENCE FOR ANOTHER CRIME—OHIO PARDON AND PAROLE COMMISSION WITHOUT AUTHORITY TO GRANT PRISONER CERTIFICATE OF RESTORATION OF CIVIL RIGHTS FORFEITED BY PREVIOUS CONVICTIONS—SECTION 2965.17 RC.

## SYLLABUS:

1. A certificate issued by the governor on the 13th day of December, 1932, restoring his forfeited civil rights to a prisoner then serving a life sentence in the penitentiary for murder, there being no pardon or commutation of sentence, and the conditions set out in Section 2162, General Code, not having been complied with, was not authorized by the provisions of either Sections 2161 or 2162, General Code, then in force, and was of no legal effect.

2. Where, under the provisions of Section 2965.17, Revised Code, a prisoner has served his maximum sentence under a conviction for armed robbery, but is still under a life sentence for another crime, the Ohio Pardon and Parole Commission is without authority to grant such prisoner a certificate of restoration of his civil rights forfeited by his previous convictions.

Columbus, Ohio, February 29, 1956

Ohio Pardon and Parole Commission  
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion which reads as follows:

"We are hereby requesting legal advice from your office in the case of R. G. No. 48735 LPF and 72781 LPF.

"R. G. was admitted to the Ohio Penitentiary on 24 August 1920 to serve a life sentence for murder in the second degree. On 2 November 1931 he was released on parole. He later received a statement signed by the warden and the parole board and the superintendent of the London Prison Farm stating as follows: 'Parole and final release was given to R. G. 28 November 1932.' It further says 'Absolute release is now ordered.' He then received from Governor George White, dated 13 December 1932 Restitution of Civil Rights to R. G. It recites he was convicted April Term, Highland County, 1920, Second Degree Murder, Life Sentence, 'Thereby forfeiting certain rights and privileges theretofore possessed by him; and whereas said R. G. has served the term of sentence according to law without any violation or rules as it appears by certificate of words on file in Governor's Office and thereby secured a restitution of the rights and privileges forfeited in said conviction; therefore, this certificate is issued to such R. G. as evidence of restitution of aforesaid.' With respect to this latter document your attention is respectfully called to certain sections of the General Code which were then in force, G. C. 2161 and G. C. 2162. G. C. 2161 refers to restoration of civil rights where a convict had served his entire term and, according to the wording of Governor White's certificate just mentioned, this was apparently the form used for such restora-

tion under G. C. 2161. However, G. had not served his entire term which was life. G. C. 2162 provided for the restoration of civil rights to a convict who was not entitled to such relief under G. C. 2161 and provided for certain additional requirements in order for the Governor to grant such a restoration.

"On 15 January 1940 G. under No. 72781 LPF was admitted to the Ohio Penitentiary to serve a 10 to 25 year sentence for armed robbery. He was paroled on 22 July 1949 and received a final release from this Commission on 16 August 1950. Because he apparently was still serving the life sentence for second degree murder, and not knowing of Governor White's action we have continued to carry him on parole under No. 48735, the second degree murder number. According to the practice of this Commission and the office of the Bureau of Probation and Parole G. having conducted himself properly for five years under supervision, he was told by the Bureau he would no longer be under active supervision. However, we did not restore at any time the civil rights he may have under the armed robbery conviction because it was our assumption those rights were still suspended by the second degree murder conviction and sentence.

"We would like to know if Governor White's action was valid and if it did restore his civil rights in the second degree murder case and if it would be proper for us to issue a restoration of civil rights in the armed robbery case, and, further, if a similar certificate should be now issued covering both cases. We would like to know what action if any we can take in order to effectively restore such rights and further if it is mandatory for us to do so."

On December 13, 1932, the date of the certificate given to R. G. by Governor White, Sections 2161 and 2162, General Code, were in full force. These sections read as follows:

Section 2161:

"A convict who has served *his entire* term without a violation of the rules and discipline, except such as the board of managers has excused, shall be restored to the rights and privileges forfeited by his conviction. He shall receive from the governor a certificate of such restoration, to be issued under the great seal of the state, whenever he shall present to the governor a certificate of good conduct which shall be furnished him by the warden."

Section 2162:

"A convict not entitled to restoration under the next preceding section, having conducted himself in an exemplary manner for a period of not less than twelve consecutive months succeeding his release, may present to the governor a certificate to that

effect signed by ten or more good and well known citizens of the place where he has resided during such period. The good standing of such citizens and the genuineness of their signatures must be certified to by the probate judge of the county where they reside. Such convict shall be entitled to a restoration of his rights and privileges, as provided for in the next preceding section."

From the statements in your letter, it might have been assumed that the governor, in undertaking to restore the civil rights of the prisoner, was acting in a regular manner, and that he had commuted the prisoner's sentence. The power of commutation is conferred on the governor by Section 11 of Article III of the Constitution. And a commutation, if it had been granted, would have the effect of shortening the sentence of life imprisonment to a term of years fixed according to the terms of the commutation. 30 Ohio Jurisprudence, 516; In re Victor, 31 Ohio St., 206. Therefore the action of the governor in restoring the civil rights would have been in conformity to the provision of Section 2161, General Code, above quoted.

However, you have later informed me that you find no evidence of the grant of a commutation as to the prisoner in question. We turn then to Section 2162, *supra*. The two sections were enacted in the same act (81 v. 72.). They are manifestly to be considered in *pari materia*. Accordingly, if the convict in question had not served his entire term, but had been released—presumably on parole—and had conducted himself in an exemplary manner, and such good conduct had been certified to by "two or more good and well known citizens" and the good standing of such citizens and the genuineness of their signatures had been certified to by the probate judge, then he would have been entitled to the certificate of restoration from the governor as provided in Section 2161.

The facts furnished me fail to show that any of these steps were taken. On the contrary, your supplemental letter indicates that prior to about 1943 an informal procedure prevailed, as stated in your letter, whereby "the record clerk in each institution would prepare a list and submit it to the governor where it was automatically taken care of. From time to time numerous individuals having life sentences would appear on this list and would be routinely processed, although there was no legal authority to do so."

Assuming such to have been the procedure in the case before us, it is plain that there was no compliance with Section 2162, *supra*.

Accordingly, it must follow that the action of the warden or superintendent in giving the prisoner a statement saying "absolute release is now ordered," and the certificate issued and given the prisoner by the governor, reciting that he had "served the term of sentence" and that he had "thereby secured a restitution of the rights and privileges forfeited in said conviction," were without legal authority and void.

Coming then to the matter of the present duty and authority of your commission in connection with the subsequent conviction of the prisoner for armed robbery, I note the provision of Section 2965.17, Revised Code, reading as follows:

"A prisoner who has served the maximum term of his sentence or who has been granted his final release by the commission, shall be restored to the rights and privileges forfeited by his conviction. He shall receive from the commission a certificate of such restoration."

Manifestly, if this were the only offense for which the prisoner is now subject to imprisonment, you would be authorized when the prisoner has served his maximum sentence and has been granted his release, to give him a certificate of restoration of his civil rights. But since it appears that he is still under a life sentence for murder, your commission could not lawfully take such action.

Accordingly, in answer to the questions submitted, it is my opinion:

1. A certificate issued by the governor on the 13th day of December, 1932, restoring his forfeited civil rights to a prisoner then serving a life sentence in the penitentiary for murder, there being no pardon or commutation of sentence, and the conditions set out in Section 2162, General Code, not having been complied with, was not authorized by the provisions of either Sections 2161 or 2162, General Code, then in force, and was of no legal effect.

2. Where, under the provisions of Section 2965.17, Revised Code, a prisoner has served his maximum sentence under a conviction for armed robbery, but is still under a life sentence for another crime, the Ohio Pardon and Parole Commission is without authority to grant such prisoner a certificate of restoration of his civil rights forfeited by his previous convictions.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General