

two miles by the nearest traveled highway from the school to which they have been assigned, to a *public school* in the rural or village district or to a *public school* in another district. * * * ”

It will be noted in the above section that the language is very clear that the transportation must be provided to a “public school” in another district and not to a private school of any kind. Were pupils transported by a board of education to a school privately supported, then there might later logically follow a request for tuition payment for such pupils, and this claim could not be recognized by the board of education under the law, the same being discussed in Opinion 282, appearing at page 497, Vol. 1, Opinions of the Attorney-General for 1919, the syllabus of which reads:

“Tuition contracts and agreements must be made between boards of education representing school districts and any school privately supported cannot collect tuition from a board of education (sections 7750-7752 G. C.) and tuition can be paid only to boards of education within the state of Ohio.”

Based upon the statutes above quoted and the opinions heretofore issued by this department, it is therefore the opinion of the Attorney-General that:

1. Where the wife of a member of a board of education appears as a party to a contract with such board of education, such contract is in violation of section 4757 G. C., and is null and void.

2. Where a school has been suspended by a board of education under the provisions of section 7730 G. C., the transportation provided by the board of education must be to a public school and not to a school privately supported.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1697.

OHIO REFORMATORY FOR WOMEN—COMMITMENTS UNDER SECTION 13031-17-a G. C. ARE FELONIES—SAID SECTION CONSISTENT WITH SECTION 2148-9 G. C.—COMMITMENTS UNDER SECTION 13031-17-b G. C. ARE MISDEMEANORS—EXCEPTION TO GENERAL RULE STATED BY SECTION 2148-9 G. C.

1. *Commitments to the Ohio Reformatory for Women under the provisions of section 13031-17a G. C. (108 O. L., Part I, p. 731) are to be regarded as felony commitments, and are “for an indeterminate period of time not less than one nor more than three years in duration.” With said section, the provisions of section 2148-9 G. C. are entirely consistent.*

2. *Commitments to the Ohio Reformatory for Women under the provisions of section 13031-17b G. C. (108 O. L. Part I, p. 732) are to be regarded as misdemeanor commitments, and are, pursuant to the provisions of said section, “for not*

more than one year." Said section is in the nature of an exception to the general rule for misdemeanor commitments stated by section 2148-9 G. C.

COLUMBUS, OHIO, December 10, 1920.

Ohio Board of Clemency, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your letter reading as follows:

"We are enclosing you a letter from the superintendent of the Ohio Reformatory for Women, asking for a ruling as to the effect of the act of June 17, 1919, known as 'An act providing for the suppression of prostitution,' upon the existing provisions of section 2148-9 of the General Code, governing the commitment of inmates to that institution.

The act of June 17, 1919, referred to, covers two classes of offenders, namely first and second degree, with terms of imprisonment fixed in each instance.

The officials of the reformatory for women are in a quandary as to how to make the records in the cases committed to that institution under the new act.

Some courts have committed inmates for the offenses covered by the act of 1919, without any specification that they were convicted under that act. Others have so committed them with a clear indication of the intention of the commitment under the new act.

The point upon which the ruling is desired is whether those committed under the act mentioned are to be treated, as to the duration of sentence, in a manner different from that provided in section 2148-9 of the General Code."

In connection with your query it is necessary to consider the following statutes:

"Sec. 12372 G. C. Offenses which may be punished by death, or by imprisonment in the penitentiary are felonies; all other offenses are misdemeanors."

"Sec. 2148-9 G. C. (103 O. L. 672) * * * Courts imposing sentences to the Ohio reformatory for women shall make them general, and not fixed or limited in their duration. • The term of imprisonment of persons shall be terminated by the Ohio board of administration as authorized by this act, but the term of such imprisonment for *felony* shall not exceed the maximum term nor be less than the minimum term provided by law for the crime for which such person is sentenced. In case of commitments for *misdemeanor* or delinquency the term of such imprisonment shall not be more than three years, but such person shall be eligible for parole as follows: Persons committed for the first time, after imprisonment for two months; for second time, after four months; for third or greater time, after six months; and provided that they shall be continued upon parole for at least one year before receiving final discharge. * * *"

"Sec. 92 G. C. (107 O. L. 600). Upon the appointment of the members of the Ohio board of clemency as hereinbefore provided, and their qualification, such board shall supersede and perform all of the duties now conferred by law upon the Ohio board of administration with relation to the release, parole, and probation of persons confined in or under sentence to the penal or reformatory institutions of Ohio; and thereafter the said

Ohio board of clemency, shall be vested with and assume and exercise all powers and duties in all matters connected with the release, parole or probation of persons confined in or under sentence to the penal institutions of Ohio now cast by law upon the said Ohio board of administration. * * *

"Sec. 13031-13 G. C. (108 O. L., Part I, p. 730). From and after the passage of this act it shall be unlawful to keep, set up, maintain or operate any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation; or to occupy any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation or for any person to permit any place, structure, building or conveyance owned by him or under his control to be used for the purpose of prostitution, lewdness or assignation, with knowledge or reasonable cause to know that the same is, or is to be, used for such purpose; or to receive or to offer or agree to receive any person into any place, structure, building or conveyance for the purpose of prostitution, lewdness or assignation or to permit any person to remain there for such purpose; or to direct, take or transport, or to offer or agree to take or transport, any person to any place, structure or building or to any other person with knowledge or reasonable cause to know that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation; or to procure or to solicit or to offer to procure or solicit for the purpose of prostitution, lewdness or assignation; or to reside in, enter or remain in any place, structure or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness or assignation; or to engage in prostitution, lewdness or assignation or to aid or abet prostitution, lewdness or assignation by any means whatsoever."

"Sec. 13031-16 G. C. (108 O. L., Part I, p. 731). Whoever shall be found to have committed two or more violations of any of the provisions of section 13031-13 of the General Code within a period of one year next preceding the date named in an indictment, information or charge of violating any of the provisions of section 13031-13 of the General Code, shall be deemed guilty in the first degree. Whoever shall be found to have committed a single violation of any of the provisions of this act shall be deemed guilty in the second degree."

"Sec. 13031-17 G. C. (108 O. L., Part I, 731, 732) (a). Whoever shall be found guilty in the first degree, as set forth in section 13031-16, shall be subject to imprisonment in, or commitment to, any penal or reformatory institution in this state for not less than one nor more than three years; provided, that in case of a commitment to a reformatory institution the commitment shall be made for an indeterminate period of time of not less than one nor more than three years in duration, and the board of managers or directors of the reformatory institution, or other officer, board or commission vested with such powers, shall have authority to discharge or to place on parole any person so committed after the service of the minimum term, or any part thereof, and to require the return to the said institution for the balance of the maximum term of any person who shall violate the terms or conditions of the parole.

(b) Whoever shall be found guilty in the second degree, as set forth in section 13031-16, shall be subject to imprisonment for not more than one year; provided, that the sentence imposed, or any part thereof, may be suspended, and provided further that the defendant may be placed

on probation in the care of a probation officer designated by law or theretofore appointed by the court upon the recommendation of five responsible citizens. * * *

The last three of the sections of the General Code just above quoted constitute a part of what your letter refers to as the act of June 17, 1919, being H. B. 350, 108 O. L., Part I, 730. It will be noted that sections 13031-16 and 13031-17 G. C. provide for two kinds of penalty, to-wit a penalty for guilt "in the first degree" and a penalty for guilt "in the second degree." Such a classification is, however, reconcilable with the provisions of section 2148-9 G. C. if it can be said that "first degree" conviction is a *felony* conviction and a "second degree" conviction, a *misdemeanor* conviction.

The test of whether a given offense against the criminal laws of Ohio is a felony or misdemeanor is the manner of punishment, section 12372 G. C. providing that an offense punishable by death or by imprisonment in the penitentiary is a felony, all other offenses being misdemeanors. The language of section 13031-17a

"Whoever shall be found guilty in the first degree, as set forth in section 13031-16, shall be subject to imprisonment in, or commitment to, any penal or reformatory institution in this state * * *"

clearly includes the Ohio penitentiary, the same being a penal institution. Offenses which are punishable by imprisonment in the penitentiary are felonies, under the holding of the court in the case of McKelvy vs. State, 87 O. S. 1, even though they may also be punishable by imprisonment elsewhere. At page 7 the court, after referring to section 12372 G. C., says:

"As the punishment for the offense charged herein *may be* imprisonment in the penitentiary under section 13008 above, this fixes its character and makes it a felony, notwithstanding the fact that it may also be punished as a misdemeanor."

Section 13031-17a, when regarded as fixing the penalty for a *felony*, is entirely consistent with section 2148-9 G. C. In the first named section the provision is for commitment

"* * * for not less than one nor more than three years, provided, that in case of a commitment to a reformatory institution the commitment shall be made for an indeterminate period of time not less than one nor more than three years in duration * * *"

Compare with this, that part of section 2148-9 G. C. which says:

"Courts imposing sentences to the Ohio reformatory for women shall make them general, and not fixed or limited in their duration. The term of imprisonment shall be terminated by the Ohio board of administration as authorized by this act, but the term of such imprisonment for felony shall not exceed the maximum term nor be less than the minimum term provided by law for the crime for which such person is sentenced."

In section 13031-17b the language is:

"Whoever shall be found guilty in the second degree, as set forth

in section 13031-16, shall be subject to imprisonment *for not more than one year; * * **"

As to *where* the imprisonment in such cases is to be had, it is not expressly stated. However, construing said provision and section 13031-17a together, we think it is reasonably clear that the place of punishment for one guilty of the second, or inferior, degree of the crime is not in any event to be the Ohio penitentiary, and it would therefore follow that the offense is not a felony but a misdemeanor only.

We have, then, this situation as to the term of imprisonment of one who has been found guilty and committed to the Ohio reformatory for women as a "second degree" violator of section 13031-13 G. C.: (1) A statute of general application, to-wit, section 2148-9 G. C., which says that

"In case of commitments for misdemeanor * * * the term of such imprisonment shall not be more than *three years* * * *"

and (2) a statute of special application, to-wit section 13031-17b which says that the guilty person

"shall be subject to imprisonment for *not more than one year* * * *."

The first mentioned statute was passed April 18, 1913, while the last mentioned statute was passed June 17, 1919, and is therefore the latest expression of the legislative will.

Under well settled rules of construction we think it is clear that the maximum term of imprisonment for one committed to the Ohio reformatory for women as a "second degree" violator of section 13031-13 G. C. is *one year* and not *three years*. In other words we hold that the legislature intended that section 13031-17b should constitute an exception to the general rule for misdemeanor commitments stated by section 2148-9 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1698.

ROADS AND HIGHWAYS—WHERE ROAD IMPROVEMENT UNDERTAKEN UNDER AUTHORITY OF SECTIONS 6906 ET SEQ. G. C.—PETITION FILED BY PROPERTY OWNERS, ETC.—PARTICULAR CASE—WHETHER PETITION CONTAINS NUMBER OF SIGNERS MENTIONED IN SECTIONS 6907 TO 6909 G. C. HAS BECOME IMMATERIAL.

Under authority of sections 6906 et seq., G. C., a road improvement project has been undertaken, and a petition filed by property owners which was found by the county commissioners to contain the requisite number of signatures as mentioned in sections 6907 to 6909 G. C. This finding was followed by the passage of a resolution of necessity by unanimous vote of the three commissioners (see sections 6907 and 6910 G. C.), and in said resolution of necessity the commissioners set forth the plan to be followed in apportioning cost (section 6919 G. C.) Thereafter, notice was published for the filing of surveys, estimates, etc., and fixing time for hearing (section 6912 G. C.) After date fixed for hearing, a final resolution was passed by unanimous