above described, free and clear of all incumbrances except the taxes on said property for the last half of 1930, the amount of which is not stated in the abstract, and except the undetermined taxes on said property for the year 1931. These unpaid taxes are, of course, a lien upon said property.

Upon examination of the warranty deed tendered by Joseph S. Cochran and Jessie Schappman, I find that said deed has been properly executed and acknowledged by them and by Irma B. Cochran and W. B. Schappman, wife and husband, respectively, of said Joseph S. Cochran and Jessie Schappman, and that the form of said deed is such that it is legally sufficient to convey the above described property to the state of Ohio by fee simple title, with general warranty that the title conveyed to the state is free, clear and unincumbered.

Encumbrance estimate No. 782, which has been submitted as a part of the files relating to the purchase of this property, has been properly executed and approved, and the same shows that there is a sufficient unincumbered balance in the appropriation account to pay the purchase price of said property.

Said encumbrance estimate does not show the approval of the purchase of this land by the director of public works, who, under the provisions of section 154-40, General Code, is authorized to purchase all real estate required by the state or any department thereof. I assume, however, that the approval of the director of public works to the purchase of this property will be obtained before the voucher and warrant covering the purchase price of this property are issued.

It likewise appears from the certificate of the board of control submitted to me that said board du'y approved the purchase of this land and released the money necessary to pay the purchase price of said property, which purchase price is the sum of thirty-six hundred dollars.

I am herewith returning said corrected abstract of title with my approval, subject to the exceptions above noted with respect to the lien of the taxes on said property; and I am likewise herewith enclosing with my approval said warranty deed, encumbrance record No. 782, the certificate of the board of control and other files submitted to me relating to the purchase of the above described property.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3420.

PRISONER—FEMALE—CONVICTED OF MAIMING OR DISFIGURING ANOTHER WITH CORROSIVE ACID—WHEN ELIGIBLE FOR PAROLE—WORD "MAY" IN SECTION 12416, GENERAL CODE, CONSTRUED.

SYLLABUS:

1. *The word "may", as used in section* 12416, *General Code, is directory and not mandatory and a person convicted of maiming or disfiguring another by the use of corrosive acid can be sentenced for a term of years of not less than three nor more than thirty or for life, the latter sentence being discretionary.*

2. *A female over sixteen years of age sentenced to "be imprisoned in the Ohio Reformatory for Women at Marysville, Ohio, until released according to law", after being convicted of using corrosive acid in maiming and disfiguring*

another, is eligible for parole after serving the minimum term provided for by section 12416, *General Code, to wit, three years.*

COLUMBUS, OHIO, July 11, 1931.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of recent date which reads as follows:

> "The Ohio Board of Clemency has requested an opinion on the following question:
>
> Prisoner No. 1495, Ohio Reformatory for Women appeared before the Board of Clemency at the March, 1931, meeting for consideration for parole. This prisoner was sentenced to the Ohio Reformatory for Women from Franklin County on a charge of 'Maiming by throwing corrosive acid.' She was not tried on a murder charge although the victim died as a result of his injuries.
>
> Section 12416 under which this prisoner was sentenced reads as follows:
>
> 'Whoever, with malicious intent to main or disfigure cuts, **** shall be imprisoned in the penitentiary not less than three years nor more than thirty years; and whoever, with like intent throws upon the person of another oil of vitriol or other corrosive acid, or caustic substance, so as to disfigure the person, may be imprisoned for life.'
>
> The Board of Clemency asks whether the word *may* in the above section means *shall,* or may the judge sentence the prisoner for a lesser term than life.
>
> In the case of prisoner No. 1495 the journal entry merely states that 'defendant **** be imprisoned in the Ohio Reformatory for Women at Marysville, Ohio, until released according to law.'
>
> In this case may the prisoner be paroled by the Ohio Board of Clemency? If so, when is she eligible for parole?"

Section 12416, General Code, reads as follows:

> "Whoever, with malicious intent to maim or disfigure, cuts, bites or slits the nose, ear or lip, cuts out or disables the tongue, puts out or destroys an eye, cuts off or disables a limb or member, of another, or throws or pours upon or throws at another scalding water, or assaults another with a dangerous instrument, shall be imprisoned in the penitentiary not less than three years nor more than thirty years; and whoever, with like intent, throws upon the person of another oil of vitriol or other corrosive acid, or caustic substance, so as to disfigure the person, may be imprisoned in the penitentiary for life."

The construction to be given the word "may" depends upon the object evidently designed to be reached by the legislature when it enacted Section 12416. General Code, and we must look to the four corners of the act to determine the meaning and import of the word employed. As a general rule criminal statutes are strictly construed and all doubts are resolved in favor of the accused. This rule of construction is so expressed by the court in the case of *Silsby* vs. *State,* 119 O. S. 314, at page 317, wherein the court said:

"We are of the opinion that all reasonable doubts concerning statutory procedure relative to the trial and sentence of accused persons should be resolved in their favor to the same extent that juries are required to resolve all reasonable doubts in their favor in the course of their deliberations."

The history of this legislation can be traced beginning with an act found in 33 O. L. 38, which made it unlawful to maim a person on his body. This early statute did not make it a crime if a person was maimed or disfigured by the use of corrosive acid.

In 78 O. L. 43 the statute relative to maiming or disfiguring another person was amended to read as follows:

"Whoever with malicious intent to maim or disfigure, cuts, bites, or slits the nose, ear, or lip, cuts out or disables the tongue, puts out or destroys an eye, cuts off or disables a limb or any member of another person, or whoever with like intent, throws or pours upon, or throws at another person any scalding hot water, vitriol, or other corrosive acid, or caustic substance, or whoever with like intent assaults another person with any dangerous instrument whatever, shall be imprisoned in the penitentiary not more than twenty years nor less than one year."

It will be noticed that this statute made it a crime to maim or disfigure another by the use of corrosive acid and the penalty for so doing was imprisonment for a term of not less than one year nor more than twenty years, which was the same as was provided for the various other methods of maiming or disfiguring a person. This section, known as Section 6819, Revised Statutes, was subsequently amended in 95 O. L. 646, wherin the punishment for the use of corrosive acid was increased to a possible sentence of life imprisonment. As amended, section 6819 reads as follows:

"Whoever with malicious intent to maim or disfigure, cuts, bites, or slits the nose, ear or lip, cuts out or disables the tongue, puts out or destroys an eye, cuts off or disables a limb or any member of another person, or whoever with like intent, throws or pours upon or throws at another person any scalding hot water, or whoever with like intent assaults another person, with any dangerous instrument whatever, shall be imprisoned in the penitentiary not more than thirty years nor less than three years, and whoever with like intent throws upon the person of another, oil of vitriol, or other corrosive acid, or caustic substance so as to disfigure the person, may be imprisoned in the penitentiary for life."

Section 6819, Revised Statutes, is now known as section 12416, General Code, and is similar to section 6819, Revised Statutes, except for slight changes in phraseology and punctuation. The legislature uses both the words "shall" and "may" in reference to the penalties to be imposed on a person for violating section 12416, General Code. The word "shall" is used in connection with the penalty provided for disfigurement or maiming resulting from physical violences. The word "may" is used in connection with the penalty provided for when acid is used to maim or disfigure another. In conformity with the rule of statutory construction, as stated in the Silsby case, supra, such meaning should be attributed to the word "may" as will not render its use meaningless or redundant. It may be urged that the legislative intention to make a life sentence mandatory when

corrosive acid is used in maiming or disfiguring a person is manifest when the legislature in 95 O. L. 646 declared that the penalty for the using of corrosive acid "may be imprisonment for life," instead of a term of years as formerly provided in 78 O. L. 43. If the word "may" is to be considered as mandatory, then it would be difficult, if not impossible, to give that word any significance different from the word "shall," which the legislature used when providing a penalty for maiming or disfiguring resulting from physical violences. If the legislature intended that the penalty for using corrosive acid in maiming or disfiguring a person was to be life imprisonment it would have used the word "shall" instead of "may," as the legislature did do in the various statutes defining the crime of murder and providing the penalties therefor.

An examination of sections 12400, 12401, 12402, 12402-1, General Code, all relating to the crime of murder, discloses that the legislature provided that taking a life in violation of the aforesaid statutes, "shall be punished by death," unless the jury recommend mercy, in which event the penalty "shall be imprisonment in the penitentiary during life." Sections 12400 and 12401, General Code, were originally known as sections 6808 and 6809 of the Revised Statutes and, as originally enacted, defined the crime of murder and provided a death penalty for the same. Later these two sections were amended by the legislature and the amendment provided that if a jury recommend mercy the penalty for the crime of murder, upon such recommendation of mercy, "shall be imprisonment for life in the penitentiary." The legislature, in the amendment of those statutes, used the word "shall," which would indicate that if the legislature in enacting section 12416, General Code, intended that the word "may" should mean "shall" it would have used the word "shall" instead of "may." If the word "may" is to be given the same meaning as the word "shall" it is obvious that the insertion of the word "may" in section 12416 was useless and misleading. In other words, I believe the clear intent of the legislature was to use the word "may" in contradistinction to "shall" as meaning that it was discretionary on the part of the court to impose a life sentence for the crime of using corrosive acid in disfiguring or maiming a person, instead of the usual sentence of three years to thirty years. That construction of section 12416 would be consistent with the rest of the statute and is the only reasonable interpretation that can be given to section 12416 in view of the history of the legislation and the use of the word "shall" in the forepart of the statute. This interpretation of the word "may" results in a reasonable meaning which is in harmony with the purpose of the act and comes within the rule of statutory construction declared by the Supreme Court of Ohio in the case of *Cochrel* vs. *Robinson,* 113 O. S. 527. The fourth paragraph of the syllabus reads as follows:

> "In the construction of a statute the primary duty of the court is to give effect to the intention of the Legislature enacting it. Such intention is to be sought in the language employed and the apparent purpose to be subserved, and such a construction adopted which permits the statute and its various parts to be construed as a whole and give effect to the paramount object to be attained."

The next question your inquiry raises is what sentence was intended to be imposed by the trial court where the journal entry reads as follows:

> "defendant *** be imprisoned in the Ohio Reformatory for Women at Marysville, Ohio, until released according to law."

Section 13451-4, General Code, reads as follows:

"If the defendant does not show sufficient cause why judgment should not be pronounced, the court shall pronounce the judgment provided by law."

Section 2148-5, General Code, provides in part as follows:

"All female persons over sixteen years of age, convicted of felony,*** shall be sentenced to the Ohio Reformatory for Women in the same manner as male persons are now sentenced to the Ohio state reformatory."

Male persons are sentenced to the Ohio State Reformatory as provided by section 2132, General Code, which reads as follows:

"Courts imposing sentences to the Ohio state reformatory shall make them general, and not fixed or limited in their duration. The term of imprisonment of prisoners shall be terminated by the Ohio Board of Administration, as authorized by this chapter, but the term of such imprisonment shall not exceed the maximum term, nor be less than the minimum term provided by law for such felony."

By virtue of sections 2148-5 and 2132, General Code, a court sentencing a female to the Ohio Reformatory for Women can not impose a fixed or definite sentence but must sentence the convicted woman for an indeterminate term or what is known as a general sentence. The provisions similar to those contained in section 2132 and referred to by section 2148-5, as enacted in 113 O. L. 499, requiring that all females over sixteen years of age sentenced to the Ohio Reformatory for Women shall be for an indeterminate term, existed and still exist on the statute books of Ohio and can be found in section 2148-9, General Code, which reads in part as follows:

"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 (G. C. secs. 2148-1, 2148-7, 2148-9 and 2148-12), but the term of such imprisonment shall not exceed the maximum term nor be less than the minimum term provided by law for the offense for which such person is sentenced."

The general provisions relative to the sentence and term of imprisonment are the same in both sections 2132 and 2148-9, except in several respects which do not affect the general tenor of either section. Section 2148-9 was construed by the Supreme Court in the case of In re Brady, 116 O. S. 512, wherein it was held that the provisions of section 2148-9 made it mandatory that the sentencing court impose a general or indeterminate sentence for a female sentenced to the Ohio Reformatory for Women and that the maximum term imposed by the court was of no effect and of no avail to the prisoner. In other words, the accused could not obtain the benefits resulting from a definite sentence wrongfully imposed by the court and since her sentence, by law, could only be an indeterminate one, her release from the reformatory could only be obtained after she had at least served the minimum time provided by the statute that she was guilty of violating. The court further held that the sentence of the convicted person did not terminate at

the end of the time fixed by the court. Although this case was decided by the Supreme Court prior to the enactment of section 2148-5, General Code, which section incorporates the provisions of section 2132, General Code, nevertheless that case can be cited as an authority for the general proposition that all sentences to the Ohio Reformatory for Women must be general and not fixed or limited in their duration. The only difference between these statutes is that the provisions of section 2148-9 applied to sentences for misdemeanors and felonies, whereas the provisions of section 2148-5 apply to sentences for felonies.

I believe the court, in making that entry, was merely endeavoring to comply with the statutory provisions relative to the sentencing of a female to the Ohio Reformatory for Women and that the sentence indicates that the convicted person was to serve for an indeterminate term of years of not less than three or more than thirty, the same to be terminated by the Ohio Board of Clemency, at its discretion, after the prisoner had served the minimum term provided by section 12416, General Code. If the court intended, by its entry, to impose a life sentence on the prisoner it would have used language indicative of that intention.

It is therefore my opinion that:

1. The word "may", as used in section 12416, General Code, is directory and not mandatory and that a person convicted of maiming or disfiguring another by the use of corrosive acid can be sentenced for a term of years of not less than three nor more than thirty or for life, the latter sentence being discretionary with the trial judge.

2. A female over sixteen years of age sentenced to "be imprisoned in the Ohio Reformatory for Women at Marysville, Ohio, until released according to law", after being convicted of using corrosive acid in maiming and disfiguring another, is eligible for parole after serving the minimum term provided for by section 12416, General Code, to wit, three years.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3421.

SCHOOL PUPIL—RESIDING IN ONE DISTRICT AND ATTENDING SCHOOL IN ANOTHER IN CLASS FOR CRIPPLED CHILDREN—TUITION NOT CHARGEABLE TO SCHOOL DISTRICT OF CHILD'S RESIDENCE—EXCEPTIONS NOTED.

SYLLABUS:

When a child who is a resident of one school district attends in another district a class for the blind, deaf or crippled, or a class in which some special instruction needed by the child because of his handicap, is provided, the board of education of the district in which he resides may not be compelled to pay his tuition or any part thereof, unless such payment is directed by the Director of Education, or unless an agreement has been entered into between the two boards of education whereby the board of education of the district of the child's residence had agreed to pay tuition for the child.

COLUMBUS, OHIO, July 11, 1931.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—This will acknowledge receipt of the following request for my