

city's portion, paving and sewer bonds, in the aggregate amount of \$750,000, dated December 1, 1929, bearing interest at the rate of 4¼ % per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1317.

PRISONER — CONCURRENT SENTENCES DO NOT MAKE
PREVIOUS CONVICTION—REFORMATORY AND PENI-
TENTIARY.

SYLLABUS:

1. *When a prisoner is convicted of and sentenced on two or more felonies and the sentencing court orders that such sentence shall run concurrently, such sentences do not place the defendant in the category of prisoners previously convicted of crime if the sentences are identical in length of time. However, since the sentence says "run concurrently" the second sentence will have been completed at the same point of time as the first sentence. If the sentences are not identical, the defendant is placed in the category of a prisoner previously convicted of crime upon the completing of the first sentence for purposes of transfer.*

2. *When a prisoner while on parole commits another felony and upon conviction thereof is sentenced to the Ohio State Reformatory and the court orders that the new sentence shall run concurrently with the sentence which the prisoner was serving on parole, such prisoner is subject to transfer to the Ohio Penitentiary as one previously convicted of crime but such second sentence shall run concurrently with that being served at the time of parole violation.*

3. *When a prisoner is sentenced on two or more convictions and the sentencing court orders that the sentences are to run consecutively, such prisoner after commitment to the Ohio State Reformatory and*

completing the sentence on the first conviction is then subject to transfer to the Ohio Penitentiary as a prisoner previously convicted of crime.

COLUMBUS, OHIO, October 15, 1937.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR MADAM: YOUR communication of recent date requesting an opinion reads as follows:

"In consideration of the provisions of an opinion of the Attorney General, No. 5745, dated June 25, 1936, we respectfully request your opinion on the following questions:

1. When a prisoner is convicted of and sentenced on two or more felonies and the sentencing court designates that such sentences shall run concurrently, do the concurrent sentences place him in the category of prisoners previously convicted of crime or serving a second prison sentence and therefore subject to transfer to the Ohio Penitentiary under the provisions of Sections 2131, 2140 and 2210-2, G. C.?

2. When a prisoner while on parole commits another felony, is convicted and sentenced to the Ohio State Reformatory, and the committing court designates that the new sentence shall run concurrently with the sentence which the prisoner was serving on parole at the time the latest offense was committed, is the prisoner subject to transfer to the Ohio Penitentiary under the provisions of Sections 2131, 2140 and 2210-2 G. C.?

3. When a prisoner is convicted of and sentenced on two or more felonies and the sentencing court designates that the sentences are to run consecutively, is the prisoner subject to transfer to the Ohio Penitentiary as a person 'previously convicted of crime' or having been 'previously sentenced to a state prison'?"

Webster defines the word "concurrent" as running together, co-joined; associate; con-comitant; existing or happening at the same time. This definition is, of course, contrary to the meaning of the words "previous or second" each of which carry the implication that a former concurrence or commitment of the act has obtained.

Section 2131, General Code, reads as follows:

"The superintendent shall receive all male criminals between the ages of sixteen and thirty years sentenced to the re-

reformatory, *if they are not known to have been previously sentenced to a state prison.* Male persons between the ages of sixteen and twenty-one years convicted of felony shall be sentenced to the reformatory instead of the penitentiary. Such persons between the ages of twenty-one and thirty years may be sentenced to the reformatory; if the court passing sentence deems them amenable to reformatory methods. No person convicted of murder in the first or second degree shall be sentenced or transferred to the reformatory." (Italics mine.)

In your request you do not state what felony was committed upon which the sentence and the commitment of the court was based. I am, therefore, considering the request with the view that the first indictment alleged a first offense.

Section 2140, General Code, reads as follows:

"The Ohio board of administration, with the written consent of the governor, may transfer to the penitentiary a prisoner, who, subsequent to his committal, shall be shown to have been more than thirty years of age at the time of his conviction or *to have been previously convicted of crime.* 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." (Italics mine.)

Let me refer to Opinion of the Attorney General No. 5745 (June 25, 1936) the fourth branch of the syllabus of which reads as follows:

"4. Where the Board of Parole, for the violation of a parole, orders the recommitment of the parole violator to the institution from which the prisoner was paroled, such order of the board cannot interfere with or suspend the execution of a sentence imposed by a court on the parole violator for an offense committed by him while on parole even though by virtue of Section 2211-9, General Code, the Board of Parole has the power on the revocation of a parole to recommit the prisoner to the institution from which he was paroled. (Fourth paragraph of the syllabus of Opinions of the Attorney General for 1933, Vol. II, P. 1273, approved and followed)".

It is true that the facts upon which the above opinion was given, embraced the right of the court to sentence a parole violator and is

quite different from the instant set of circumstances in that the question we are now considering is the meaning of the court when he sentences a criminal defendant on two indictments and order that they shall be served concurrently. However, it is the clear meaning of Opinion 5745, *supra*, that neither the Department of Public Welfare nor the board of parole has the authority to suspend or interfere with the execution of a sentence imposed by a court of competent jurisdiction if the sentence so imposed is in accordance with the law. Section 2210-2, General Code, reads as follows :

“If through oversight or otherwise, a prisoner is sentenced to the Ohio penitentiary or the Ohio state reformatory *who is not legally eligible for admission thereto*, the warden or superintendent of said institution shall receive said prisoner and shall forthwith recommend to the department of public welfare, the transfer of said prisoner to the proper institution. Prisoners so transferred shall be entitled to the same legal rights and privileges as to the term of sentence, diminution of sentence and parole, as if originally sentenced and committed to the institution to which they have been transferred.” (Italics the writer’s).

The other provisions of law cited herein authorize such superintendent, upon learning of a previous sentence to a state prison or of a previous conviction of crime, to report that fact to the Ohio Board of Administration, which board, with the consent of the Governor, may transfer such prisoner to the penitentiary. Section 154-57, General Code, reads in part as follows :

“The department of public welfare shall have all powers and perform all duties vested in or imposed upon the Ohio board of administration * * *”

The meaning of the section of the General Code last quoted is clear and inmates of the Ohio State Reformatory may now, under the proper circumstances, be transferred to the Ohio Penitentiary with the consent and approval of the Director of Public Welfare, rather than that of the Ohio Board of Administration.

Let us come now to the definition of the word “consecutive” which Webster defines as following in a train; succeeding one another in a regular order or with uninterrupted course of succession; with no interval or break. The authority of a sentencing judge to give two sentences to be served concurrently in the circumstances set forth in your request

is unquestioned and needs no further comment here. Likewise, authority of such a court to order such sentences to run consecutively is unquestioned. In interpreting the meaning of the criminal sections of the General Code, it is the rule that they shall be construed strictly.

Let us approach the first question involved in your request with a consideration of the word "conviction." It is, of course, as a matter of fact impossible to have more than one conviction at any one point of time. If then there are two convictions and the committing court orders sentences in each conviction to run concurrently, the sentence does not govern the status of the prisoner when received at the Ohio State Reformatory. It is the conviction and the point of time of the conviction which is the governing factor in determining the status of a prisoner under the meaning of Section 2140, General Code. I shall, therefore, answer your question in two parts:

1. When a prisoner is convicted of and sentenced on two or more felonies and the sentencing court orders that such sentences shall run concurrently, such sentences do place the defendant in the category of prisoners previously convicted of crime if the sentences are identical in length of time. However, since the sentence says "run concurrently" the second sentence will have been completed at the same point of time as the first sentence. If the sentences are not identical, the defendant is placed in the category of a prisoner previously convicted of crime upon the completing of the first sentence for purposes of transfer. When a prisoner while on parole commits another felony and upon conviction thereof is sentenced to the Ohio State Reformatory and the court orders that the new sentence shall run concurrently with the sentence which the prisoner was serving on parole, such prisoner is subject to transfer to the Ohio Penitentiary as one previously convicted of crime but such second sentence shall run concurrently with that being served at the time of parole violation.

2. When a prisoner is sentenced on two or more convictions and the sentencing court orders that the sentences are to run consecutively, such prisoner after commitment to the Ohio State Reformatory and completing the sentence on the first conviction is then subject to transfer to the Ohio Penitentiary as a prisoner previously convicted of crime.

Respectfully,

HERBERT S. DUFFY,
Attorney General.