

township where the limits of the township extend beyond the limits of the village, or where the limits of the township are identical with the corporate limits of the village.

2. A deputy village marshal, with the consent of the mayor and council of the village, may at the same time serve as constable of the township where the limits of the township extend beyond the limits of the village, or where the limits of the township are identical with the corporate limits of the village.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

2692.

CRIMINAL—TWENTY YEARS OF AGE PREVIOUSLY INCARCERATED IN OHIO STATE REFORMATORY—UPON SUBSEQUENT CONVICTION OF FELONY SENTENCED TO OHIO PENITENTIARY.

*SYLLABUS:*

*A male person twenty years of age who previously had been convicted and sentenced to the Ohio State Reformatory, must be sentenced to the Ohio Penitentiary on being convicted and sentenced for a subsequent felony.*

COLUMBUS, OHIO, May 19, 1934.

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

DEAR SIR:—This will acknowledge your letter which reads:

“We respectfully request your interpretation of the meaning of Section 2131 G. C., and your opinion of the following question:

One F. G. was sentenced on February 6, 1930, to the Ohio State Reformatory from Carroll County on a charge of Attempted Burglary—1 to 15 years. On April 1, 1931, this man was paroled from the Ohio State Reformatory. On January 12, 1932, he was declared a parole violator but was not apprehended. While on parole, April 28, 1933, he was sentenced to the Ohio Penitentiary from Stark County on a charge of Assault to Rob—1 to 15 years. At the time of his sentence to the Penitentiary, he was only twenty years of age.

Query: Was the Penitentiary sentence in this case illegal, and should the prisoner be transferred to the Ohio State Reformatory under the provisions of Section 2210-2 G. C.?

Does Section 2131 G. C. mean that any and all male persons between the ages of sixteen and twenty-one years convicted of felony, except murder in the first and second degree, shall be sentenced to the

Reformatory instead of the Penitentiary, irrespective of whether they have previously been sentenced to a state prison?"

Section 2131, General Code of Ohio, reads:

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

Although, as a general rule, a trial court, under section 2131, General Code, has no discretion in the matter of where persons of the ages of sixteen to twenty-one years convicted of a felony in Ohio shall be committed, it must be borne in mind that the mandatory language in reference to such persons is qualified by other provisions contained in that section. It is apparent from a reading of section 2131, General Code, that all sentences of persons to the Ohio State Reformatory are subject to the provisions contained therein that no persons between the ages of sixteen and thirty years can be sentenced to the Ohio State Reformatory if such persons have been convicted of murder in the first or second degree or have been previously sentenced to a state prison. It is obvious that the legislature did not intend that all persons between the ages of sixteen and twenty-one years shall be committed to the Ohio State Reformatory, since it is impliedly provided in section 2131, General Code, that the superintendent of the reformatory shall not receive any person between the ages of sixteen and thirty years who is sentenced to the Ohio State Reformatory, if known to have been previously sentenced to a state prison. Likewise, it is provided that no male person between the ages of sixteen and thirty years convicted of murder in the first or second degree shall be sentenced or transferred to the reformatory. Since the superintendent of the reformatory is authorized by section 2131, General Code, to refuse admittance to all male prisoners between the ages of sixteen and thirty years who have been previously convicted and sentenced to a state prison, an interpretation of section 2131, General Code, to the effect that the mandatory language contained in the first sentence of section 2131, General Code, does not apply to male persons between the ages of sixteen and twenty-one years who have been convicted of a felony, would be unwarranted. Such an interpretation would also defeat the very purpose of establishing and maintaining an intermediate penal institution such as the reformatory, which was established for the purpose of rehabilitating first offenders in an institution wherein second offenders and hardened criminals are not incarcerated and to keep first offenders segregated from repeaters.

Such purpose is further evident from a reading of section 2140, General Code of Ohio, which reads in part:

"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."

A question similar to the one contained in your letter was passed upon by the Court of Appeals of Cuyahoga County in the case of *Russell vs. State*, 7 O. L. Abs. 5. The court, by Williams, Judge, at page 6, said:

"The principal contention of counsel for plaintiff in error is that the sentences were erroneous in that the plaintiff in error was only twenty years of age at the time and could only be sentenced to the Ohio State Reformatory and not to the penitentiary, under General Code, Section 2131.

There is no question that the Ohio State Reformatory at Mansfield is a state prison. Under Section 2131 General Code the superintendent is required to receive all male criminals between sixteen and thirty years, lawfully sentenced to the reformatory, providing they have not been 'previously sentenced to a state prison,' and the court pronouncing sentence has no power to impose a sentence to the Ohio State Reformatory where the convicted person has been previously sentenced to the Ohio State Reformatory. If a convicted person between sixteen and twenty-one has not been previously sentenced to a state prison, the court shall sentence him to the Ohio State Reformatory, but if he is between twenty-one and thirty years and has not previously been sentenced to a state prison, the court may sentence him to the reformatory if amenable to reformatory methods, otherwise to the penitentiary."

It is therefore my opinion that a male person twenty years of age who previously had been convicted and sentenced to the Ohio State Reformatory, must be sentenced to the Ohio Penitentiary on being convicted and sentenced for a subsequent felony.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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2693.

COUNTY BUDGET COMMISSION—UNDER SECTION 5625-27, GENERAL CODE, FISCAL OFFICER MAY CERTIFY ADDITIONAL SOURCES OF ESTIMATED REVENUE WHEN—AUTHORITY OF COUNTY BUDGET COMMISSION WITH RESPECT THERETO.

**SYLLABUS:**

1. *Subsequent to the issuance by a county budget commission, on or about*