

"It will be noted that again no mention is made of a division of funds or indebtedness in cases in which municipalities annex territory. The act of the legislature in striking from the legislation relating to the annexation of territory to a municipal school district the apportionment of funds and indebtedness between two districts after numerous changes as to the vesting of the title of property situated in the territory annexed, would indicate that the intent of the legislature was not to provide for a division of indebtedness or funds other than as indicated by their last act, unless provision is made in some other section for such apportionment."

I find no statutory authority for making a division of indebtedness other than indebtedness on school property. It is therefore my opinion that the City of Lancaster School District is not liable for any portion of the said bonded indebtedness.

Respectfully,

EDWARD C. TURNER,
Attorney General.

757

OHIO BOARD OF CLEMENCY—CONCERNING THEIR AUTHORITY TO PAROLE FEMALES WHO HAVE BEEN CONVICTED OF MURDER IN THE SECOND DEGREE AND SENTENCED TO IMPRISONMENT IN THE OHIO REFORMATORY FOR WOMEN.

SYLLABUS:

The Ohio Board of Clemency has authority to establish rules and regulations under which females convicted of murder in the second degree and sentenced to imprisonment in the Ohio Reformatory for Women may be allowed to go upon parole in legal custody, the only limitations upon the board's power being that such prisoners must have been recommended as worthy of such consideration by the superintendent of the reformatory before they shall be considered by the board and must have served within the reformatory five years imprisonment.

COLUMBUS, OHIO, July 21, 1927.

Ohio Board of Clemency, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of recent date which reads as follows:

"Two prisoners in the Ohio Reformatory for Women, Marysville, Ohio, have been recommended for a hearing for parole by the Superintendent of the Reformatory, both convicted of murder in the second degree, and given a life sentence, but neither of them has served the full term of ten years as required in the case of males in Section 2169. These recommendations have been made under a provision in Section 2148-10, reading as follows:

'That no femal sentenced to imprisonment for life shall be eligible to parole within five years from admission.'

Question—Has the Board of Clemency the power to parole a prisoner sentenced for life for murder in the second degree under that section before the

expiration of ten years? If it has that power what is the status of the prisoner from the date of parole until the expiration of the ten years required in the original statute, No. 2169, as to murder in the second degree?"

The act creating the Ohio Reformatory for Women is found in 102 Ohio Laws 207 (passed May 15, 1911,) and is entitled:

"An Act—To establish a reformatory for women and to provide for the management thereof."

The statutes relating to this institution are Sections 2148-1 to 2148-12a of the General Code, both inclusive, and must not be confused with the statutes relating to the Ohio penitentiary which appear as Sections 2160 to 2175 of the General Code, both inclusive.

The sections pertinent to your inquiry are Sections 2148-9 and 2148-10, which respectively read as follows:

Sec. 2148-9. "All provisions of law relating to suspension of sentences of persons sentenced to confinement in the Ohio penitentiary and the Ohio state reformatory shall be applicable to persons sentenced to the Ohio reformatory for women.

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 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.

If, through oversight or otherwise, a sentence to said reformatory should be for a definite period, it shall not for that reason be void, but the person so sentenced shall receive the benefits and be subject to the liabilities of this act in the same manner as if she had been sentenced in the manner required by law. In such case the Ohio Board of Administration shall deliver to each person a copy of this act and written information of her relations to them."

Sec. 2148-10. "The Ohio Board of Administration shall establish rules and regulations under which persons in the Ohio reformatory for women may be allowed to go upon parole in legal custody, under the control of the board and subject to be taken back into the inclosure of the reformatory. A person shall not be eligible to parole and an application for such parole shall not be considered by the board until such prisoner has been recommended as worthy of such consideration by the superintendent of the reformatory, provided, that no female sentenced to imprisonment for life shall be eligible to parole within five years from admission.

Where there is a reasonable probability that the prisoner's release or parole will not be incompatible with the welfare of society and the board deems it best, it may grant absolute release to such prisoner. Nothing herein contained, however, shall impair the power of the governor to grant a pardon or commutation in any case."

By Section 92, General Code, it is provided that the Ohio Board of Clemency

"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."

Even if Section 2148-9, supra, did not expressly refer to the other pertinent sections contained in the same act, since Section 2148-10, supra, relates to the same subject matter and is a statute in *pari materia*, the two sections must be construed together.

Although Section 2149-9, supra, may be said to be analogous to Section 2166, General Code, the provisions of Section 2148-10, supra, authorizing parole of inmates confined in the Ohio Reformatory for Women are entirely different from the provisions of Section 2169, General Code, which makes provision for the parole of prisoners confined in the Ohio Penitentiary.

By the provisions of Section 2148-10, supra, the Ohio Board of Administration (now the Ohio Board of Clemency) is given power to establish rules and regulations under which persons in the Ohio Reformatory for Women may be allowed to go upon parole in legal custody, under the control of the board and subject to be taken back into the inclosure of the reformatory. *The only limitation upon the board's power to parole is that "a person shall not be eligible to parole and an application for such parole shall not be considered by the board until such prisoner has been recommended as worthy of such consideration by the superintendent of the reformatory, provided, that no female sentenced to imprisonment for life shall be eligible to parole within five years from admission."*

The limitations contained in Section 2169, General Code, relate solely to the Ohio Penitentiary and have no application whatsoever to the Ohio Reformatory for Women.

Answering your question specifically it is my opinion that females convicted of murder in the second degree and sentenced to imprisonment in the Ohio Reformatory for Women for life may be allowed to go upon parole in legal custody, by the Ohio Board of Clemency, on and after they have served five years within the inclosure of the reformatory, remaining, however, under the control of the board and subject to be taken back into the inclosure of the reformatory. When there is a reasonable probability that the prisoner's release or parole will not be incompatible with the welfare of society and the board deems it best, it may grant absolute release to such prisoner. The only limitations upon the Ohio Board of Clemency's power to parole such a prisoner is that such parole shall not be considered by the board, until such prisoner shall have been recommended as worthy of such consideration by the superintendent of the reformatory and shall have served within the reformatory five years' imprisonment.

In view of the foregoing I deem it unnecessary to answer your second question.

Respectfully,

EDWARD C. TURNER,
Attorney General.

758.

APPROVAL, NOTE OF WALHONDING RURAL SCHOOL DISTRICT,
COSHOCTON COUNTY, \$1,440.00.

COLUMBUS, OHIO, July 21, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.