pleted the elementary school work shall be entitled to transportation to the high school of such rural district, and the board of education thereof shall be exempt from the payment of the tuition of such pupils in any other high school for such a portion of four years as the course of study in the high school maintained by the board of education includes."

"Sec. 7749-1. The board of education of any district, except as provided in Section 7749, may provide transportation to a high school within or without the school district; but in no case shall such board of education be required to provide high school transportation except as follows: If the transportation of a child to a high school by a district of a county school district is deemed and declared by the county board of education advisable and practicable, the board of education of the district in which the child resides shall furnish such transportation."

By the plain terms of Section 7748 and 7749 the transportation therein authorized to be paid must be for that of pupils attending public schools. While the terms of Section 7749-1, supra, are not so clear, I am of the opinion that the high schools referred to therein are public schools and that the terms of that section cannot be extended to authorize the transportation of a child to a private high school. An examination of the related sections of the Code shows that in each instance the only schools under discussion are public schools, and their provisions have no application whatsoever to private schools. I feel that I should be unwarranted in extending the meaning of this particular section to include private schools, in the absence of specific language on the part of the legislature. Especially is this so in view of the inhibition against the payment of tuition to private schools, since the transportation of a pupil to and from school, while in one sense purely for the benefit of the pupil, nevertheless is actually thus as effectual a financial assistance to the private school as would be the payment of tuition.

Answering your question specifically, therefore, I am of the opinion that there is no authority for the payment of either tuition or cost of transportation from public funds for pupils attending private schools, and any such payment to a private school of tuition or expense incurred in the transportation of a pupil to a private school is illegal.

Respectfully,
EDWARD C. TURNER,
Attorney General.

727.

CLEMENCY BOARD—CONCERNING AUTHORITY TO ANNUL A SENTENCE—RESTORATION TO PAROLE—VIOLATION OF PAROLE.

SYLLABUS:

1. *Under the provisions of Section* 2174, *General Code, where a prisoner has violated the conditions of his parole or conditional release, and the Ohio Board of Clemency has declared such prisoner to be delinquent and entered such facts in the proceedings of the board, such prisoner shall thereafter be treated as an escaped prisoner owing service to the state and, when arrested, shall serve the unexpired period of the maximum term of his imprisonment and the Ohio Board of Clemency is without authority again to restore such prisoner to parole.*

2. *The Ohio Board of Clemency is without authority to "annul" a sentence as that word is used in Section 2175, General Code.*

COLUMBUS, OHIO, July 11, 1927.

Ohio Board of Clemency, Columbus, Ohio.

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

> "Section 2174, provides that a prisoner violating the conditions of his parole or conditional release from the Ohio Penitentiary *when arrested, shall serve the unexpired period of the maximum term of his imprisonment.*
>
> Such violators may be delinquent in varying degrees, viz.:
>
> (a) Those who violate minor conditions of parole as per blank certificate enclosed.
>
> (b) Those who violate the law, by committing a misdemeanor.
>
> Have the Warden and Chaplain the right to recommend such a prisoner for a hearing for parole a second time, under the same sentence, or has the Board of Clemency the power to restore such a prisoner to parole *under any circumstances?*
>
> There is a third class of violators; those who commit a felony while on parole from the Ohio Penitentiary, and Section 2175 provides that the second sentence is *'to begin at the termination of his service under the first or former sentence, or the annulment thereof.'*
>
> Does the last clause *'the annulment thereof'* mean that the Board of Clemency may release a prisoner from serving any part of the first sentence, to allow him to begin serving the second sentence before the maximum of his first sentence has been served?'

On March 24, 1884, (81 O. L. 72) the legislature passed an act entitled:

> An Act—Relating to the imprisonment of convicts in the Ohio penitentiary, and the employment, government and release of such convicts by the board of managers.

Section 10 thereof provided in part as follows:

> "And it is hereby provided that any prisoner violating the conditions of his parole or conditional release (by whatever name), as affixed by the managers, when by a formal order, entered in the managers' proceedings, he is declared a delinquent, shall thereafter be treated as an escaped prisoner owing service to the state, and shall be liable, when arrested, to serve out the unexpired period of the maximum possible imprisonment, and the time from the date of his declared delinquency to the date of his arrest shall not be counted as any part or portion of time served. And any prisoner at large upon parole or conditional release committing a fresh crime, and upon conviction thereof, being sentenced anew to the penitentiary, shall be subject to serve the second sentence, after the first sentence is served or annulled, to commence from the date of termination of his liabilities upon the first or former sentence."

This act became Section 7388-13 of the Revised Statutes and although slight changes in phraseology were made by the codifying commission of 1910, the act has

not since been amended and now appears as Sections 2174 and 2175 of the General Code, which read as follows:

> "Sec. 2174. A prisoner violating the conditions of his parole or conditional release, having been entered in the proceedings of the board of managers and declared to be delinquent, shall thereafter be treated as an escaped prisoner owing service to the state, and, when arrested, shall serve the unexpired period of the maximum term of his imprisonment. The time from the date of his declared delinquency to the date of his arrest shall not be counted as part of time served."

> "Sec. 2175. A prisoner at large upon parole or conditional release committing a new crime, and resentenced to the penitentiary, shall serve a second sentence, to begin at the termination of his service under the first or former sentence, or the annulment thereof."

As stated in 36 Cyc. 1106:

> "The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the legislature. This intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts."

At page 114 of the same work it is said:

> "In the interpretation of statutes words in common use are to be construed in their natural, plain, and ordinary signification. It is a very well-settled rule that so long as the language used is unambiguous, a departure from its natural meaning is not justified by any consideration of its consequences, or of public policy, and it is the plain duty of the court to give it force and effect."

1. In answer to your first inquiry, by the plain provisions of Section 2174, supra when any prisoner, who has been paroled or conditionally released from the Ohio penitentiary, has violated the conditions of his parole or conditional release, and the Board of Managers, (now the Ohio Board of Clemency) has entered that fact in its proceedings and declared the prisoner to be delinquent, such prisoner is to be thereafter treated as an escaped prisoner owing service to the state and, when arrested, such prisoner must serve the unexpired period of the maximum term of his imprisonment.

Your attention is directed to two former opinions of this office, viz., Opinions Nos. 574 and 567, which appear in Vol. II, Annual Report of the Attorney General for 1912, at pages 952 and 979, respectively. The syllabus of Opinion No. 574 reads:

> "Under Section 2174 of the General Code a prisoner who violates the conditions of his parole or conditional release, must be required to serve the entire maximum term of his imprisonment, deducting therefrom only the time from the date of his first commitment to the date of his declared delinquency."

and the syllabus of Opinion No. 567 is as follows:

> "By Section 2174 providing for the reincarceration of prisoners who violate paroles or conditional releases, it is intended to subject such to the

penalty of serving out the entire maximum term of their imprisonment without deductions for former or later 'good time.' "

In the earlier opinion Attorney General Hogan used the following language:

"In other words, said section means that after a prisoner has been paroled and been declared a delinquent as provided in said section, he is compelled to serve all the unexpired period of his maximum term of his imprisonment, no difference how long after said prisoner has been declared a delinquent until he is rearrested he being entitled only to have credit on said maximum term of his imprisonment for the time actually served from the date of his original imprisonment to the date of his being declared a delinquent as provided therein, the latter part of the section depriving him of the time from the date of his declared delinquency to the date of his arrest as part of time served."

By the provisions of Section 2169, General Code, the Ohio Board of Administration (now the Ohio Board of Clemency) is directed to establish rules and regulations by which a prisoner under sentence other than for treason or murder in the first or second degree, having served the minimum term provided by law for the crime for which he was convicted, or a prisoner for murder in the second degree having served under such sentence ten full years, may be allowed to go upon parole outside the building and inclosure of the penitentiary.

Section 2170, General Code, makes provision that all prisoners on parole shall remain in the legal custody and under control of the Board of Managers (now the Ohio Board of Clemency), subject to be taken back within the inclosure of the penitentiary, and authorizes such board to make and enforce rules and regulations with respect to the retaking and reimprisonment of convicts under parole. The statute further provides that the written order of the board certified by its secretary shall be sufficient warrant for all officers named therein to return to *actual* custody a conditionally released or paroled prisoner.

The legislature has thus provided means whereby worthy prisoners may be allowed to go upon parole outside the building and inclosure of the penitentiary remaining, however, in legal custody and under the control of the Board of Clemency and subject to be taken back within the inclosure of the penitentiary in the event that they violate the conditions of their parole or conditional release. Provision is further made in Section 2174, supra, whereby a prisoner who violates the conditions of his parole or conditional release and who has been entered in the proceedings of the board and declared to be delinquent shall thereafter be treated as an escaped prisoner owing service to the state and when arrested shall serve the unexpired period of the maximum term of his imprisonment.

The legislature has clearly expressed its intention in plain and unambiguous language. There is no alternative in the case of a prisoner, who has violated the conditions of his parole or conditional release and has been declared to be delinquent by the Ohio Board of Clemency, which has entered such facts in the proceedings of the board, the statute clearly providing that upon his arrest such prisoner must be returned to the penitentiary and *there* serve the unexpired period of the maximum term of his imprisonment.

I concur in the conclusions reached by my predecessor and am of the opinion that the Ohio Board of Clemency is without authority again to parole such a prisoner.

2. By the provisions of Section 2175, supra, a prisoner at large upon parole or conditional release, who commits a new crime and is resentenced to the penitentiary, must serve the second sentence to begin at the termination of his service under the first or former sentence, or the annulment thereof.

It is fundamental that boards, such as the Ohio Board of Clemency, being creatures of statute, can exercise only such powers as are expressly granted by statute and such as are necessarily implied to carry the powers expressly granted into effect.

"Annul" as defined by Bouvier means: "To abrogate, nullify or abolish; to make void."

Nowhere in the powers expressly or impliedly granted to the Ohio Board of Clemency is authority given to "annul" a sentence. Such action may only be taken in a proper proceeding by a court of competent jurisdiction, or by a pardon duly granted by the proper authority.

Answering your second question specifically, it is my opinion that Section 2175, supra, in no wise grants authority to the Board of Clemency to release a prisoner, who has been paroled and has been convicted and sentenced to the penitentiary for a new crime, from serving any part of his first sentence in order to allow him to begin serving the second sentence before the maximum term of the first sentence has been served. As provided in Section 2174, supra, upon the return of such a prisoner to the penitentiary, he must serve the unexpired period of the maximum term of his imprisonment and as provided in Section 2175, the second sentence imposed for the new crime committed while on parole does not begin to run until the termination of his service under the first sentence or the annulment thereof by a court of competent jurisdiction or by a pardon properly granted. In other words, the sentence contemplated in Section 2175 supra, and therein referred to as a "second sentence" is in reality a sentence *in futuro* which does not begin until either the termination of the service under the first or former sentence, or the annulment thereof.

Respectfully,
EDWARD C. TURNER,
Attorney General.

728.

BOARD OF EDUCATION—AUTHORITY TO ACT WHEN JOINT PETITION FOR TRANSFER IS FILED—MANDATORY AND DISCRETIONARY DUTIES.

SYLLABUS:

The filing of a joint petition by electors of more than one, or parts of more than one school district seeking the transfer of school territory, is not authorized by Section 4696 *General Code, and the filing of such a petition vests no jurisdiction in the county board of education to act thereon.*

A county board of education is charged with the mandatory duty of transferring territory from a rural school district in which the schools have not been centralized to an exempted village school district upon petition of seventy-five percent of the qualified electors residing in the territory sought to be transferred. If however, the territory which the petitioners asked to have transferred is a district or part of a district in which the schools have been centralized, it is discretionary with the county board whether it makes the transfer or not irrespective of the number of petitioners.

COLUMBUS, OHIO, July 12, 1927.

HON. HAROLD A. PREDMORE, *Prosecuting Attorney, Hillsboro, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication as follows:

"I submit herein the following questions pertaining to the transfer of territory between school districts located in Highland County, Ohio.