

1. A reservation in favor of John B. Wright, a former owner, under a deed of October 1, 1887, covering the use of the roadway, conveyed as a part of the land under consideration, to be used as a means of ingress from the rear fields on the farm then owned by said John B. Wright. This reservation is carried through subsequent deeds and is incorporated in the deed which D. E. Spahr proposes to deliver to the State of Ohio.

2. The 1927 taxes, the amount of which is not yet determined.

3. The records of the county auditor show that he has received and is now making up a special assessment duplicate for the improvement of the Springfield and Xenia pike in the sum of \$122.57, or of \$15.59 per annum if paid in instalments.

The deed has been executed by David E. Spahr, one and the same person as D. E. Spahr and Emma Spahr, his wife, by the terms of which they convey to the State of Ohio, its successors and assigns, the above described real estate. The deed conveys the land free and clear from all encumbrances, except taxes and assessments due and payable in December, 1927, and thereafter. The deed has been acknowledged by David E. Spahr and his wife before a notary public of Greene County on the fifteenth of October, 1927. This deed, when properly delivered, will transfer the title of D. E. Spahr in said land to the State of Ohio.

I herewith return the abstract and deed.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1276.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN ALLEN, PERRY AND WAYNE COUNTIES.

COLUMBUS, OHIO, November 18, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

1277.

OHIO STATE REFORMATORY—WITHOUT AUTHORITY TO REFUSE PRISONER SENTENCED BY A COURT OF COMPETENT JURISDICTION.

SYLLABUS:

1. *The judgment or sentence of the trial court is a finality, unless and until the same be set aside or modified by a court of competent jurisdiction, and the superintendent of the Ohio State Reformatory, the Ohio Board of Clemency and all other administrative officers are bound thereby, in the absence of action thereon by a court having jurisdiction so to act.*

2. *The superintendent of the Ohio State Reformatory is without authority to refuse to receive a prisoner sentenced thereto by a court of competent jurisdiction, if the commitment papers of such person are legal and valid on their face.*

COLUMBUS, OHIO, November 18, 1927.

Ohio Board of Clemency, Columbus, Ohio.

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

“In your Opinion No. 819, dated August 2, 1927, in discussing the sentence to be imposed on a repeater who has served a term in the Ohio State Reformatory, or other state prison, you state—‘The court, if it has knowledge of such prisoner’s prior sentence to a state prison, is without lawful authority to sentence such prisoner to the Ohio State Reformatory upon conviction for the second felony and should commit such prisoner to the Ohio Penitentiary as provided by law.’

Question 1.—In case the court does commit the prisoner a second time to the Ohio State Reformatory, as courts persist in doing when they know he is a second termor, is the prisoner then supposed to be serving an *indeterminate sentence* or the *Ohio Penitentiary* sentence?

Question 2.—When such a prisoner is brought to the Ohio State Reformatory, has the superintendent the right to refuse to receive him, although so sentenced by the court?”

The language of Opinion No. 819, dated August 2, 1927, Opinions, Attorney General, 1927, to which you refer appears in the discussion relative to your second inquiry in the letter requesting that opinion, which inquiry was as follows:

“Also, in the case of a parole violator from the Ohio State Reformatory convicted of a second felony, should the judge order him to be returned to the Ohio State Reformatory to serve time as a violator, or should he be committed directly to the Ohio Penitentiary under Section 2131?”

The paragraph of the opinion to which you refer and from which the quotation is taken reads as follows:

“If, under the rules and regulations established, the superintendent of the Ohio State Reformatory does not determine to retake and reimprison such paroled prisoner the court, if it has knowledge of such prisoner’s prior sentence to a state prison, is without lawful authority to sentence such prisoner to the Ohio State Reformatory upon conviction for the second felony and should commit such prisoner to the Ohio Penitentiary as provided by law.”

1. I am not certain what you mean when you inquire “Is the prisoner then supposed to be serving an indeterminate sentence or the Ohio Penitentiary sentence?”

Section 2132, General Code, together with Section 2133, relating to sentences to the Ohio State Reformatory, is analogous to Section 2166, General Code, which relates to sentences to the Ohio Penitentiary. Both sections provide that courts imposing sentences to the respective institutions to which they refer “shall make them general.” In other words the sections referred to provide that all sentences to either institution shall be indeterminate.

In answer to your first question, it is my opinion that the judgment or sentence of the trial court is a finality, unless and until the same be set aside or modified by a court of competent jurisdiction, and that the superintendent of the Ohio State Reformatory, the Ohio Board of Clemency and all other administrative officers are bound thereby, in the absence of action thereon by a court having jurisdiction so to act. However, as pointed out in Opinion No. 819 rendered to your board under date of August 2, 1927, by virtue of the provisions of Section 2140, General Code, which reads:

"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."

the Director of Public Welfare, with the written consent of the governor, may transfer a person, shown to have been previously convicted of crime, to the Ohio Penitentiary.

2. The language of Section 2131, General Code, viz., "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" no doubt gives rise to your second inquiry. This section does not authorize the superintendent of such institution to refuse to receive a prisoner whose commitment papers are legal and valid on their face, even though such prisoner is known by the superintendent to have been previously sentenced to a state prison. The commitment papers do not contain on their face any information whether such prisoner has or has not been previously sentenced to a state prison and it is immaterial whether or not such superintendent has personal or hearsay knowledge in that regard. The commitment papers, if valid on their face, control and such superintendent cannot assume judicial authority in determining whether or not a prisoner whose commitment papers issued by a court of competent jurisdiction are valid and legal on their face is eligible to admission in such reformatory. The remedy in such case is provided for by Section 2140, General Code, supra.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1278.

COUNTY COMMISSIONERS—HAVE NO AUTHORITY TO MAKE APPLICATION TO COMMON PLEAS COURT FOR TRANSFER OF FUNDS FROM ROAD FUND TO GENERAL COUNTY FUND—SPECIAL LEVIES DISCUSSED.

SYLLABUS:

Section 2296 of the General Code confers no authority upon the county commissioners to apply to the court of common pleas for authority to transfer the proceeds of the two mill levy, made for the purpose of the construction, reconstruction, improvement,