

Nothing in Sections 4647-1 to 4647-9 requires full-time service as a fireman as a qualification or limitation to the privileges of the indemnity fund therein created. These sections of the Code intend to provide an indemnity fund for disabled firemen whether regularly so employed or volunteer.

It is my opinion that one properly employed as a volunteer fireman is a member of the fire department in contemplation of Sections 4647-1 to 4647-9 of the General Code, and that said sections apply to volunteer fire departments.

Respectfully,
EDWARD C. TURNER,
Attorney General.

6.

UNDER SECTION 2919, G. C., UPON A NOLLE PROSEQUI BEING ENTERED, PHOTOGRAPHS, PICTURES, DESCRIPTIONS, FINGER PRINTS, MEASUREMENTS, ETC., OF ACCUSED NOT HABITUAL CRIMINAL UNDER SENTENCE FOR VIOLATION OF STATE LAWS SHALL BE GIVEN TO ACCUSED UPON REQUEST—BUREAU OF CRIMINAL IDENTIFICATION AND INVESTIGATION MAY MAKE RULES—EVIDENCE FURNISHED.

SYLLABUS:

1. *Upon a nolle prosequi being entered under provisions of Section 2919 of the General Code, any photographs, pictures, descriptions, finger prints, measurements and such other information as may be pertinent taken by virtue of Section 1841-18 of an accused who is not a well known and habitual criminal, or who is not confined in any workhouse, jail, reformatory or penitentiary, for the violation of state laws, shall be given to the accused upon his request.*

2. *The Bureau of Criminal Identification and Investigation may make such reasonable rules as they deem just as to what evidence should be furnished said bureau that a nolle prosequi had been entered.*

COLUMBUS, OHIO, January 17, 1927.

The Ohio State Bureau of Criminal Identification and Investigation, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of January 10, 1927, requesting my opinion upon the following:

“The matter in question is the provision of this section which permits the return of finger prints to the accused when he be found not guilty of the offense charged. We have been requested by attorneys of Cincinnati to return criminal records of two men charged with robbery, the charges having been nollied by the prosecuting attorney.

We do not know if the provisions of this section intended to include the nolle prosequi and we would be pleased if you would advise what procedure we should follow in this matter as we will no doubt have similar requests in the future.

We have not been advised by the prosecuting attorney of Cincinnati as to his action in the case of these two men although we have requested him to forward this information, therefore, in any case, we do not believe these records which have become the property of the state, should be relinquished

to any attorney for the accused except upon presentation of a certificate of the procedure of the court in causing the charges to be nollied."

Section 1841-15 of the General Code (110 O. L. 5; 109 O. L. 585), reads:

"The superintendent shall procure and file for record photographs, pictures, descriptions, finger prints, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of felony within the state and of all well-known and habitual criminals from wherever procurable, and it shall be the duty of the person in charge of any state institution to furnish any such material to the superintendent of the state bureau of criminal identification upon the request of the superintendent. The superintendent shall co-operate with and assist sheriffs, chiefs of police and other law officers in the establishment of a complete state system of criminal identification and in obtaining finger prints and other means of identification of all persons arrested on charge of felony. He shall also file for record the finger print impressions of all persons confined in any workhouse, jail, reformatory, penitentiary, for the violation of state laws, and such other information as he may receive from law enforcement officials of the state and its subdivisions."

Section 1841-18 of the General Code (110 O. L. 5; 109 O. L. 585) reads:

"It is hereby made the duty of the sheriffs of the several counties of the state, the chiefs of police of cities and marshals of villages therein immediately upon the arrest of any person for any felony, to take his finger prints according to the finger print system of identification on the forms furnished by the superintendent, and forward the same, together with such other description as may be required and with the history of the offense committed, to the bureau to be classified and filed, but should any accused be found not guilty of the offense charged, then said finger prints and description shall be given to the accused upon his request. And the superintendent of the state bureau of criminal identification shall report any dereliction in the performance of this duty by any sheriff, chief of police, or marshal, or any dereliction in the duty imposed upon any person having charge of a state institution as provided in Section 1841-15 of the General Code, to the governor, who shall make immediate investigation thereof, and upon the order of the governor the proper disbursing officer shall not issue any salary voucher or pay voucher to any said official found by the governor to be derelict in the performance of the duties provided by this enactment until such dereliction has been corrected. The superintendent shall compare the descriptions received with those already on file in the bureau and if he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the arresting officer of such fact; and in order to facilitate the work of identification, the name or names under which each person whose identification is thus filed is known, shall be alphabetically indexed by the superintendent.

The provisions of this section shall not apply to violators of city ordinances or those arrested for misdemeanors, unless the officers have reason to believe that he is an old offender, or where it is deemed advisable for the purpose of subsequent identification."

Section 1841-15 entitled "Duties of Superintendent" states that:

"The superintendent shall procure and file for record photographs, pic-

tures, descriptions, finger prints, measurements and such other information as may be pertinent, of all persons *who have been or may hereafter be convicted of felony within the state, and of all well-known and habitual criminals from wherever procurable, * * ** ”

This means, from the language used, that he shall procure them *after conviction* in felony cases.

Vol. 29 Cyc. at page 1052, reads that *nolle prosequi*, when obtained, is to put the defendant without day; but it does not operate as an acquittal for he may be afterwards reindicted.

Section 1841-18 of the General Code, specifically states :

“* * * but should any accused be found not guilty of the offense charged, then said finger prints and descriptions shall be given to the accused upon his request.”

Black on Interpretation of Laws, says on page 62 :

“Every statute is understood to contain, by implication, if not by its express terms, all such provisions as may be necessary to effectuate its object and purpose, or to make effective the rights, powers, privileges, or jurisdiction, which it grants, and also all such collateral and subsidiary consequence as may be fairly and logically inferred from its terms.”

Statutes are seldom framed with such minute particulars as to give directions for every detail which may be involved in their practical application. Herein they are aided by the doctrine of implications. This doctrine authorizes the drawing of inferences, upon the general meaning and purpose of the legislature, and upon the necessity of making the act operative and effectual, as to those minor or more specific things which are included in the more broad or general terms of the law, or as to those consequences of the enactment which the legislature must be understood to have foreseen and intended. It is a rule of construction that that which is implied in a statute is as much a part of it as what is expressed, and as a statute must always be construed with reference to the pre-existing law, it will often happen that many details are to be inferred from the general language of the act, which are understood as necessarily involved in it, although not enumerated.

The sections enumerated herein contemplate that only those photographs, pictures, descriptions, finger prints, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of felony within the state, and of all well-known and habitual criminals from wherever procurable shall be filed for record by the Superintendent of the State Bureau of Criminal Identification and Investigation; together with the finger print impressions of all persons confined in any workhouse, jail, reformatory, or penitentiary for violation of state laws, and such other information as the director may receive from law enforcement officials of the state and its subdivisions.

Giving these sections the construction which would be a proper one to carry out the apparent intent of the legislature, it is my opinion that upon a *nolle prosequi* being entered under provisions of Section 2919 of the General Code, any photographs, pictures, descriptions, finger prints, measurements, and such other information as may be pertinent taken by virtue of Section 1841-18 of the General Code of an accused who is not a well-known and habitual criminal, and who is not confined in any workhouse, jail, reformatory, or penitentiary for the violation of state laws, shall be given the

accused upon his request. That only those finger prints, photographs, pictures, descriptions and measurements taken of an accused upon his arrest for the particular charge in which a nolle prosequi is subsequently entered should be returned. That if several indictments are pending against an accused no return should be made until a nolle prosequi of all such pending indictments had been entered. That the Bureau of Criminal Identification and Investigation may make such reasonable rules as they deem just as to what evidence should be furnished said Bureau that a nolle prosequi had been entered.

It is my suggestion that either a letter from the prosecuting attorney who submitted the nolle prosequi or a copy of the journal entry showing the nolle prosequi be furnished the Superintendent of the Bureau at the time of making such request for return.

Respectfully,

EDWARD C. TURNER,

Attorney General.

7.

VILLAGE COUNCIL—CANNOT BY ANY ACTION RELIEVE TRUSTEES OF VILLAGE SINKING FUND FROM RESPONSIBILITY FOR LOSSES THROUGH FAILURE TO REQUIRE PROPER BOND.

SYLLABUS:

The council of a village cannot by any action relieve the trustees of the village sinking fund from responsibility for losses occasioned by reason of their failure to require a proper bond from the depository which they have selected for the deposit of the funds of the village.

COLUMBUS, OHIO, January 17, 1927.

HON. PAUL V. WADDELL, *Prosecuting Attorney, Saint Clairesville, Ohio.*

DEAR SIR:—Your inquiry of recent date with reference to the releasing of the Sinking Fund Trustees of the village of Yorkville from personal responsibility on account of loss of moneys belonging to the village by reason of the failure of the Union Savings Bank, has come to my attention.

As I understand the situation the trustees of the sinking fund of the village of Yorkville deposited moneys which were in their hands as such trustees in the Union Savings Bank without requiring proper bond from the bank as required by law and upon the bank's failure the money was lost. Whereupon the state examiner made findings against the trustees as individuals for the amount of the loss and now the village council of whom one of the sinking fund trustees must necessarily be a member, desires to release them from the repayment of the amount of the loss as found by the state examiner.

I know of no way that this can be done and in fact under the statute it would seem to me to be positively forbidden.

Section 286 of the General Code of Ohio reads in part as follows:

“No claim for money or property found in any such report (meaning report of state examiner) to be due to any public treasury or custodian thereof in any such report shall be abated or compromised either before or after the filing of civil actions by any board or officer or by order of any court unless the attorney general shall first give his written approval thereof.”

The spirit of the law is to insist on full responsibility on the part of public officials