

1622.

PAROLE—JURISDICTION OF BOARD OF CLEMENCY—RECOMMENDATION SHOULD BE IN WRITING—"WORTHY OF SUCH CONSIDERATION" CONSTRUED.

SYLLABUS:

1. The words "worthy of such consideration" as the same are used in Section 2171, General Code, are to be construed in their natural, plain and ordinary signification. In other words, no prisoner of the Ohio Penitentiary having served within the penitentiary, the minimum term of imprisonment fixed by the trial court for the felony of which such prisoner was convicted, is eligible to parole until such prisoner is recommended as worthy of such consideration by the warden and chaplain of the penitentiary.

2. The Ohio Board of Clemency is without jurisdiction to consider an application for the parole of a prisoner confined in the Ohio Penitentiary until such prisoner has (1) served within the penitentiary, the minimum term of imprisonment fixed by the trial court for the felony of which such prisoner was convicted, and (2) is recommended as worthy of such consideration by the warden and chaplain of the penitentiary, notice of which recommendation shall have been published for three consecutive weeks in two newspapers of opposite politics in the county from which such prisoner was sentenced.

3. Section 2171, General Code, is silent with regard to whether the recommendation of the warden and chaplain that a prisoner is worthy of consideration for parole should be oral or in writing. To promote administrative efficiency and to insure accuracy and permanency of records, such recommendations should be made in writing.

COLUMBUS, OHIO, January 25, 1928.

HON. JOHN E. HARPER, Director, Department of Public Welfare, Columbus, Ohio.

DEAR SIR:—This will acknowledge your letter dated January 20, 1928, which reads:

"Section 2171, G. C. reads as follows:

'Conditions precedent to parole. A prisoner confined in the penitentiary shall not be eligible to parole, and an application for parole shall not be considered by the board of managers, until such prisoner is recommended as worthy of such consideration by the warden and chaplain of the penitentiary. Before consideration by such board, notice of such recommendation shall be published for three consecutive weeks in two newspapers of opposite politics in the county from which such prisoner was sentenced. The expense of such publication shall not exceed one dollar for each paper.'

We respectfully request your interpretation of the provisions of this section as to the respective duties and responsibilities of the Ohio Board of Clemency and the warden and chaplain of the Ohio Penitentiary, especially as to the meaning of 'shall not be eligible to parole, and an application for parole shall not be considered by the Board of Managers (Board of Clemency) until such prisoner is recommended as worthy of such consideration by the warden and the chaplain.'

This has been variously interpreted by persons interested, to mean

(a) That the warden and the chaplain are fulfilling their duty when they certify to the Board of Clemency the names of prisoners who are eligible

to a hearing for parole by reason of their having served the minimum of the sentence imposed.

(b) That a prisoner is worthy of consideration for parole and should be so recommended by the warden and chaplain when he has served the minimum of the sentence imposed and his conduct in prison, as indicated by the records of the prison, justifies such recommendation.

(c) That a prisoner is worthy of consideration for parole and may be considered by the Board of Clemency only when he has served the minimum of the sentence imposed, and the warden and chaplain certify that they consider him to be worthy by reason of his conduct in prison, the nature of the crime for which he is imprisoned, his past record, his attitude toward society, etc.; in other words, that he is in the opinion of the warden and chaplain really *worthy of parole*.

May we have your opinion on this question as hereinbefore stated, and your definition of the term 'worthy of such consideration' as used in this section.

Is there anything in the law which allows the Board of Clemency to act on its own initiative, without the recommendation of the warden and chaplain, in the paroling of prisoners?

Does this section mean that any recommendation made by the warden and chaplain to the Board of Clemency must be made in writing?"

As stated in 36 Cyc. at page 1114:

"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."

In the case of *Manuel vs. Manuel*, 13 O. S. 458, Judge Scott, at page 464, used the following language:

"In construing statutes, courts are ordinarily to be governed by the plain meaning of the words used by the legislature, and if the sense be apparently plain, it is not to be varied by construction, without strong reason."

The first and second paragraphs of the syllabus of the case of *Slingluff et al. vs. Weaver, et al.*, 66 O. S. 621, read as follows:

1. The object of judicial investigation in the construction of a statute is to ascertain and give effect to the intent of the law-making body which enacts it. And where its provisions are ambiguous, and its meaning doubtful, the history of legislation on the subject, and the consequences of a literal interpretation of the subject may be considered; punctuation may be changed or disregarded; words transposed, or those necessary to a clear understanding and, as shown by the context manifestly intended, inserted.

2. But the intent of the law-makers is to be first sought of all in the language employed, and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question

is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

Summarizing the language of the authorities referred to, you will note that the object of judicial investigation in the construction of statutes is to ascertain and give effect to the intent of the law-making body which enacted them. Such intent is first sought in the language employed, and words in common use are to be construed in their natural, plain and ordinary signification and if the words be free from ambiguity and doubt, and express plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation.

Section 2171, General Code, which you desire me to interpret, contains only words in common use and therefore an application of the rules of construction above referred to are pertinent in determining the inquiries that you present. Your attention is directed to Webster's New International Dictionary wherein the word "recommend" is defined as follows:

1. To commit, to give in charge; to consign, commend.
2. To commend to the favorable notice of another; to commit to another's care, confidence, or acceptance, with favoring representations; to put in a favorable light before any one.
3. To praise; to commend."

The same authority gives the following definition of "worthy";

1. Having worth or excellence; possessing merit; valuable, deserving of honor, praise, or the like; estimable.
2. Of high station; of high social position.
3. Having adequate worth or value, or a character adapted to make capable, fit, qualified, competent or the like; meriting, deserving; fit, suitable (to); suiting, befitting; * * *
4. Deserved; merited; also, well-founded."

It must be borne in mind at the outset that Section 2171, General Code, is, in its nature, a restriction upon the eligibility of a prisoner of the Ohio Penitentiary to parole and a limitation on the power of the Board of Clemency to act. In other words, after such a prisoner has served within the penitentiary, the minimum term of imprisonment fixed by the trial court for the felony of which such prisoner was convicted, two conditions precedent must be complied with before such prisoner is eligible for parole, viz.:

1. He shall not be eligible to parole, and an application for parole may not be considered by the Ohio Board of Clemency, *until* such prisoner is recommended by the warden and the chaplain of the penitentiary.
2. Before the Ohio Board of Clemency may consider his case there must be published for three consecutive weeks in two newspapers of opposite politics in the county from which such prisoner was sentenced, notice of such recommendation.

In other words the existence or non-existence of these conditions precedent is jurisdictional, and the Ohio Board of Clemency is without authority to consider an application for the parole of any prisoner confined in the Ohio Penitentiary until and after the provisions of Section 2171, General Code, are complied with.

By the plain and unambiguous language contained in Section 2171, General Code, a prisoner confined in the penitentiary shall not be eligible to parole and an application for parole shall not be considered by the Ohio Board of Clemency until such prisoner is recommended as *worthy of such consideration* by the warden and chaplain of the penitentiary. In other words, the Ohio Board of Clemency may not lawfully consider an application for the parole of any prisoner of the Ohio Penitentiary until the warden and chaplain have recommended such prisoner as worthy of such consideration. The intent of the legislature as expressed by the language used in Section 2171, General Code, was that both the warden and the chaplain of the Ohio Penitentiary, by some affirmative action, must "commend to the favorable notice," or "put in a favorable light" such prisoners as "have worth or excellence," "possess merit," "deserve," "merit," "have adequate worth or value" or "character" before the Ohio Board of Clemency may consider such prisoner's application for parole. A prisoner may have long since served his "minimum period of duration of sentence" as fixed by the trial court but the Ohio Board of Clemency can not lawfully consider such prisoner's application for parole until the warden and chaplain recommend him as worthy of such consideration and notice of such recommendation is published as provided by law.

The duty of the warden and chaplain of the Ohio Penitentiary in recommending prisoners confined therein to the Ohio Board of Clemency for parole is to exercise an honest and conscientious discretion in view of all the facts and circumstances surrounding each case. Many facts, such as the nature of the crime for which the prisoner is incarcerated, his past record, his behavior while in prison, his attitude toward society, his apparent reform or lack thereof, whether or not he has dependents requiring his services and other facts bearing on the question must be taken into consideration by the warden and chaplain in making their recommendations. It is for these officers to determine whether or not in their good judgment the prisoners in question are worthy before such a recommendation is made.

Summarizing and answering your questions specifically in the order in which you present them, it is my opinion:

1. The words "worthy of such consideration" as the same are used in Section 2171, General Code, are to be construed in their natural, plain and ordinary signification. In other words, no prisoner of the Ohio Penitentiary having served within the penitentiary, the minimum term of imprisonment fixed by the trial court for the felony of which such prisoner was convicted, is eligible to parole until such prisoner is recommended as worthy of such consideration by the warden and chaplain of the penitentiary.

2. The Ohio Board of Clemency is without jurisdiction to consider an application for the parole of a prisoner confined in the Ohio Penitentiary until such prisoner has (1) served within the penitentiary, the minimum term of imprisonment fixed by the trial court for the felony of which such prisoner was convicted, and (2) is recommended as worthy of such consideration by the warden and chaplain of the penitentiary, notice of which recommendation shall have been published for three consecutive weeks in two newspapers of opposite politics in the county from which such prisoner was sentenced.

3. Section 2171, General Code, is silent with regard to whether the recommendation of the warden and chaplain that a prisoner is worthy of consideration for parole should be oral or in writing. To promote administrative efficiency and to insure accuracy and permanency of records, such recommendations should be made in writing.

Respectfully,
EDWARD C. TURNER,
Attorney General.