

In view of the foregoing, I am compelled to advise you not to purchase these bonds.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1605.

APPROVAL, BONDS OF GOSHEN TOWNSHIP CENTRALIZED RURAL
SCHOOL DISTRICT, CLERMONT COUNTY— \$12,000.00.

COLUMBUS, OHIO, March 11, 1930.

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

1606.

PRISONER—FOUND INSANE BEFORE OR AFTER CONVICTION AND
COMMITTED TO LIMA STATE HOSPITAL—CONDITIONS PRECE-
DENT FOR RELEASE UPON RESTORATION TO REASON.

SYLLABUS:

When a person accused of crime is found insane, before trial or after conviction, and committed to the Lima State Hospital under the provisions of Section 13441-2, General Code, the superintendent of such institution may release such person when he is restored to reason upon notifying the proper authorities of the county of such fact and giving the authorities of the county a reasonable time to take such person in custody.

COLUMBUS, OHIO, March 11, 1930.

HON. HAL H. GRISWOLD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is in part as follows:

“We respectfully request your interpretation of that part of Section 13441-2 reading—‘provided, that if the court deem it advisable, it shall commit such person to the Lima State Hospital until he be restored to reason, and upon being restored to reason the accused shall be proceeded against as provided by law.’

Does the phrase ‘upon being restored to reason the accused shall be proceeded against as provided by law’ mean that a person committed under the sections quoted above, to a general state hospital for the insane or to the Lima State Hospital for the criminal insane, can not be discharged upon being restored to reason or upon being diagnosed ‘not insane’, but

that such person must be returned to the committing court to answer to the charge for which he was arraigned?"

Section 13441-1, General Code, provides as follows:

"If the attorney for a person accused of crime pending in the Court of Common Pleas, whether before or after trial suggests to the court that such person is not then sane, and a certificate of a reputable physician to that effect is presented to the court, or if the grand jury represents to the court that any such person is not then sane, or if it otherwise comes to the notice of the court that such person is not then sane, the court shall proceed to examine into the question of the sanity or insanity of said person, or in its discretion may impanel a jury for such purpose. If three-fourths of such jury agree upon a verdict, such verdict may be returned as the verdict of the jury. If there be a jury trial and three-fourths of the jury do not agree, another jury may be impaneled to try such question."

Section 13441-2 of the General Code provides as follows:

"If the court or jury find upon the hearing provided for in the next preceding section, that the accused is sane, he shall be proceeded against as provided by law. If the court or jury find him to be not sane, he shall be forthwith committed by the court to an insane hospital within the jurisdiction of the court; provided, that if the court deem it advisable, it shall commit such person to the Lima State Hospital until he be restored to reason, and upon being restored to reason the accused shall be proceeded against as provided by law."

Section 1998, General Code, provides as follows:

"The superintendent may discharge an inmate, not under sentence for crime, who, in his judgment, is recovered, or who has not recovered, but whose condition has improved to such extent that his discharge will not be detrimental to the public welfare or injurious to him. Before ordering such discharge, the superintendent shall ascertain that some friend will properly care for him at his home."

From a reading of the sections quoted above, it does not appear that there is any conflict in the provisions of these sections with reference to the authority of the superintendent to release a person accused of crime committed to the Lima State Hospital after he is restored to reason.

The language in Section 13441-2 of the General Code "and upon being restored to reason the accused shall be proceeded against as provided by law" does not impose a duty upon the superintendent to return the prisoner to the jurisdiction of the court, but is authority for the court to obtain custody of the prisoner after he is restored to reason and to proceed against him as the circumstances of the case require. The terms of Section 13441-2 of the General Code do give rise to the question whether or not it is the duty of the superintendent to notify the proper authorities of the time when the inmate is to be released. Prior to the enactment of the new criminal code of procedure by the 88th General Assembly, Section 13614 of the General Code provided that the superintendent of the Lima State Hospital having charge of a person under indictment, committed by a court to such institution, should notify the prosecuting attorney that the prisoner is

restored to reason. This section, together with a number of other related sections, was repealed by the 88th General Assembly, and Sections 13441-1 to 13441-4, inclusive, were enacted in their stead. Ordinarily the repeal of the provisions of Section 13614 with reference to the notification of the prosecuting attorney by the superintendent and the failure of the Legislature to reenact these provisions in the new sections would indicate an intention by the Legislature to relieve the superintendent of the requirement to notify the prosecuting attorney. However, it is difficult to conceive that the Legislature intended to create a condition where an officer in charge of a felon could release him without notifying the proper authorities and thus cause a miscarriage of justice.

Section 13441-2 should be so construed as to produce a reasonable result. The language "and upon being restored to reason the accused shall be proceeded against as provided by law" implies that the authorities of the county from which the accused was committed must be notified by the superintendent and given a reasonable time to take such inmate into custody, and the provisions of Section 13441-2 of the General Code should be so construed. You will note that Section 13441-1 of the General Code provides that the accused shall be committed by the court until restored to reason and the Section 1998, General Code, gives the superintendent authority to release inmates who have not fully recovered. There is an apparent conflict in the provisions of these two sections in this respect.

Section 1998, General Code, applies generally to all inmates of the Lima State Hospital, while Section 13441-1 is applicable only to a special class of inmates, that is, persons accused of crime, committed to the institution by the Court of Common Pleas. It is a general rule of statutory construction that where there is one statute dealing with a subject in general terms and another statute dealing with a part of the same subject in a more minute and definite way, the two should be read and harmonized, if possible, with a view to giving effect to a consistent legislative policy, but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one. Applying this rule of statutory construction to the statutes here in question, it follows that Section 13441-1, which deals with a special class of inmates and is a later enactment than Section 1998, General Code, will supersede Section 1998, General Code, and, therefore, the superintendent of the Lima State Hospital cannot release persons accused of crime, committed to that hospital by the Court of Common Pleas before they are restored to reason.

In specific answer to your inquiry, I am of the opinion that when a person accused of crime is found insane, before trial or after conviction, and committed under the provisions of Section 13441-2, General Code, to the Lima State Hospital, the superintendent of such institution may release such person when he is restored to reason upon notifying the proper authorities of the county of such fact and giving the authorities of the county a reasonable time to take such person in custody.

Respectfully,
GILBERT BETTMAN,
Attorney General.