3801.

APPROVAL, NOTES OF VILLAGE OF OAK HILL, JACKSON COUNTY, OHIO—$38,000.00.

COLUMBUS, OHIO, December 1, 1931.

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

3802.

BOARD OF PAROLE—NOT REQUIRED TO REPUBLISH NOTICES UNDER SECTION 2211-8, GENERAL CODE, WHERE BOARD CONTINUES DATE OF GRANTING PAROLE—SUCH CONTINUANCES NEED NOT APPEAR ON MINUTES OF THE BOARD.

SYLLABUS:

It is not necessary for the board of parole to republish or give again a notice previously published and given by the board of parole as required by section 2211-8, General Code, when the board of parole continues the date of granting a parole to some other date in the future.

The board of parole may continue undisposed cases either generally or for a definite or indefinite period of time with or without notations on the minutes of the board showing such a continuation.

COLUMBUS, OHIO, December 1, 1931.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge your letter of recent date, which reads as follows:

> "Section 2211-8 G. C. (O. L. 114, S. 149) provides:
>
> 'At least three weeks before the Board of Parole grants any parole or recommends any pardon or commutation of sentence, notice of the pendency of such matter, * * * shall be sent to the prosecuting attorney and the judge of the court of common pleas of the county in which the indictment against the offender was filed; * * * The said notice shall also be published once each week for two consecutive weeks in a newspaper published and of general circulation in said county. * * *'
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> We respectfully request your opinion on the following questions:
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> 1. After the required legal notice of the eligibility of an inmate in a penal institution has been published for two weeks and the Prosecuting Attorney and Judge in the County in which the inmate was convicted have been given the three weeks notice thereof, if the Board of Parole is unable to hold the meeting for any reason whatsoever, or, in its discretion decides to extend, or continue the case to a definite future monthly meeting, does the original legal notice and notices to the Prosecutor and Judge keep the case alive for such future consid-

eration, or does the lápse of time from the month in which the eligible first may come before the Board for hearing to the day when the meeting is finally had require a republication of the legal notice and the notices to the Judge and Prosecutor respectively?

2. In view of the large number of cases coming before the board due to the new laws, and considering the fact that it is physically impossible to finally dispose of all such cases at any regular monthly meeting until these accumulated cases are disposed of, the question of the disposition of unfinished cases arises: Is the Board of Parole permitted to continue generally all cases not disposed of at a monthly meeting, or must all unfinished cases be continued from month to month or to some definite period with a definite notation on the minutes of the board showing such continuation?"

Section 2211-8, General Code, enacted in 114 Ohio Laws, Senate Bill No. 149, reads as follows:

"At least three weeks before the board of parole grants any parole or recommends any pardon or commutation of sentence, notice of the pendency of such matter, setting forth the name of the person on whose behalf it is made, the crime of which he was convicted, the time of conviction, the term of sentence, shall be sent to the prosecuting attorney and the judge of the court of common pleas of the county in which the indictment against the offerender was found; provided, however, that where there is more than one such judge, then the notice shall be sent to the presiding judge of the county. The said notice shall also be published once each week for two consecutive weeks in a newspaper published and of general circulation in said county. In case of an application for the pardon of commutation of sentence of a person sentenced to capital punishment, the governor may modify the requirements of such notification and publication if there is not sufficient time for compliance therewith before the date fixed for the execution of sentence."

It is apparent on a reading of section 2211-8 that the board of parole is only required to give notice to the prosecuting attorney and the judge of the common pleas court of a county in which the offender was indicted, at least three weeks before the board of parole grants a parole or recommends the pardon or commutation of sentence of a prisoner in any of the penal institutions enumerated in section 2211-4, General Code. This is also true in respect to the notice which must be published once a week for two consecutive weeks.

Section 2211-8, as recently enacted, supplanted sections 95, 96, 97 and 2171, which were repealed in 114 Ohio Laws, Senate Bill 149. Section 95 reads as follows:

"Notice of the application for a pardon or commutation shall be given by or on behalf of the applicant to the prosecuting attorney of the county in which the indictment was found against him, at least three weeks before such application is considered by the board of pardons or the governor. A copy of the notice acknowledged by the prosecuting attorney, or certified under oath of a creditable (credible)

witness to be a true copy thereof, shall accompany each application to the board of pardons, and be transmitted by it with its recommendation to the governor."

Section 96 provided that

"A notice of such application, setting forth the name of the person on whose behalf it is made, the crime of which he was convicted, the time of conviction and term of sentence, shall be published in a newspaper printed and of general circulation in such county, at least three weeks before the board of pardons or the governor shall consider the application; but, in case the application is for the pardon or commutation of sentence of a person sentenced to capital punishment, the governor may modify the requirements of such publication if there is not time sufficient for compliance therewith before the date fixed for the execution of sentence."

Section 97 read:

"After the service of the notice upon the prosecuting attorney of the proper county, he shall make and forward forthwith to the board of pardons and THE OHIO BOARD OF ADMINISTRATION, AT COLUMBUS, a statement of the time of trial and conviction, and the date and term of sentence of the person in whose behalf the application for parole, PARDON or commutation is made, with a brief statement of any circumstance in aggravation or extenuation appearing in the testimony in such trial.

The board of pardons shall transmit such statement with its recommendations to the governor."

Section 2171 provided as follows:

"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."

The provisions of these former statutes required that a notice of an application for parole be given the prosecutor of the county in which the indictment was returned, at least three weeks before the board of clemency (now the board of parole) *considered such application* and also provided that the notice be published in a newspaper in the county in which the indictment was returned, at least three weeks before the board of clemency considered the application for parole. In other words, notice had to be given and published of the pendency of an application for parole prior to the consideration of such an application by the board of clemency. It is also to be noted that the prose-

cuting attorney, under the former statute section 97, was required, on being served with a notice that an application for parole was pending before the board of clemency, to "forward forthwith to the board of pardons and THE OHIO BOARD OF ADMINISTRATION" a statement relative to the trial conviction and sentence of the person up for parole and a statement of "any circumstance in aggravation or extenuation appearing in the testimony in such trial."

Under the new law (sections 2211 to 2211-9, inclusive) the prosecutor is no longer required to furnish such statements. Under the provisions of sections 2211 to 2211-9, inclusive, it appears that the legislature intended to leave the question of whether or not a person was worthy of going out on parole solely to the board of parole, upon and after its own investigation of the person eligible for parole and his record while incarcerated in a penal institution and not on the statement of the prosecutor of the history of what occurred at the trial of the prisoner. In other words, it is evident, on a reading of sections 2211, et seq., that it was the intention of the legislature to reward inmates of penal institutions in this state for their good deportment while incarcerated therein and that the board of parole was to be guided more by what the prisoner had accomplished towards his reformation and what his conduct had been while in prison than by what occurred at the trial of the case. This conclusion finds support in sections 2163, 2166, 2166-1, 2210, 2210-1, 2211-5 and 2211-6, General Code.

It also must be remembered that section 2211-8 specifically provides that the notice of the pendency of a parole shall be given to the prosecutor and judge of the county in which the indictment was returned against the offender, "at least three weeks before the board of parole grants any parole" and not as formerly provided for by repealed sections 95, 96 and 2171, three weeks before the board of clemency (now the board of parole) considered an application for parole. Under the new law, as enacted in 114 Ohio Laws, Senate Bill No. 149, the board of parole may consider the advisability of granting a parole without giving or publishing a notice that such a question is before the board of parole for its consideration. The notice provided for by section 2211-8 is only necessary "at least three weeks before the board of parole grants any parole." The time of giving and publishing the notice required by section 2211-8 is now governed by the granting of the parole instead of the consideration or hearing of the application for parole as required under the old law.

As previously stated herein, the necessity of notifying the prosecuting attorney of the committing county, prior to the hearing and consideration of an application for parole, no longer exists, by reason of the repeal of sections 95, 96, 97 and 2171. Under repealed section 97, it was necessary for the board of clemency (now the board of parole) to notify the prosecutor of the hearing of an application for parole so that he could forthwith furnish a statement about the case to the board of clemency. This statement and the information contained therein is no longer required, since the board of parole is now empowered to investigate and examine the record and past history of each prisoner eligible for parole. The board of parole, by reason of its own investigating powers, is no longer required to rely on the prosecuting attorney or community as to whether or not a prisoner should be allowed to go on parole. It is also to be noted that under the new law no formal application for parole is necessary so as to enable the board of parole to take up the case of a prisoner eligible for parole. Since the board of parole can consider the

question of granting a parole without advising the prosecutor or judge of the committing county of the pendency of the matter and there no longer being any need of advising the prosecutor of the time of the hearing or consideration of that question, it would seem to me that the requirement of section 2211-8, as to the giving and publishing of the notice required therein, is complied with whenever it is given prior to and at least three weeks before the granting of the parole, regardless of whether or not the original hearing on the question of granting a parole has been continued by the board to some other definite time.

Therefore, in specific answer to your first question, I am of the opinion that, by virtue of the provisions of section 2211-8, only one notice of the pendency of the granting of a parole need be given or published to the officials designated in that section and that notice must be given at least three weeks before a parole is granted. It is not necessary for the board of parole to republish or give again a notice previously published and given by the board of parole as required by section 2211-8, when the board of parole continues the date of granting a parole to some other date in the future.

Section 2210, General Code, enacted in 114 Ohio Laws, Senate Bill No. 116, provides in part as follows:

> "A person confined in a state penal institution and not eligible to parole before the expiration of a minimum sentence or term of imprisonment, or hereafter sentenced thereto under a general sentence, who has faithfully observed the rules of said institution, shall be entitled to the following diminution of his minimum sentence:
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> * * * * * * * * *
>
> At the expiration of the minimum sentence diminished as herein provided, each prisoner shall be *eligible* for parole as provided by law."
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> (Italics the writer's)

Section 2211-5, General Code, enacted in 114 Ohio Laws, Senate Bill No. 149, reads in part as follows:

> "The board of parole shall have the power to exercise its functions and duties in relation to parole, release, pardon, commutation, or reprieve *upon its own initiative or the initiative of the superintendent of a penal or reformatory institution.* When a prisoner becomes *legally eligible* for parole the superintendent of the institution in which he is confined shall notify the board of parole in such manner as may be prescribed by the board. The board shall have the continuous power to investigate and examine or to cause the investigation and examination of persons confined in the penal or reformatory institutions of Ohio, both concerning their conduct therein, the development of their mental and moral qualities and characteristics and their individual and social careers, and the board's action shall take into account the results of such investigation and examination. * * * *
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> (Italics the writer's)

Section 2211-6, enacted in the same act, reads in part as follows:

"Subject to the limitations imposed by law, the board of parole shall have full, continuous and exclusive power *to determine the time when,* the period for which and the terms and conditions in accordance with which any prisoner now or hereafter confined in a penal or reformatory institution may be allowed to go upon parole outside the premises of the institution to which he has been committed, assigned or transferred."

(Italics the writer's)

It is apparent from a reading of the section just quoted that a prisoner in a penal institution in this state, on the expiration of his minimum sentence less good time off for good behavior, merely becomes eligible for parole at that time. There is not statutory requirement which compels the board of parole when a prisoner becomes eligible for parole, to immediately take under consideration the question of granting him a parole. In other words, eligibility for parole is one thing and the consideration of whether or not a parole should be granted is another thing. It seems to me that the board of parole is authorized to take up and consider the advisability of paroling a prisoner only after he becomes eligible for parole and the board of parole is not required to give immediate consideration to the question of whether or not a parole should be granted. It therefore follows that it is not necessary to continue the undisposed cases from month to month or to some definite period with a definite notation on the minutes of the board showing such continuation. However, there is nothing to prevent the board from doing that thing if, in its judgment, it believes it to be the best policy. That question, however, is an administrative and not a legal problem. My conclusion finds further support by virtue of the provisions contained in section 2211-5, which provides that the board of parole shall have power to exercise its functions and duties in relation to the parole of prisoners upon its own initiative, and in that part of section 2211-6 which provides that the board of parole has full, continuous and exclusive power to determine the time when a prisoner confined in a penal institution shall be allowed to go upon parole.

Therefore, in specific answer to your second question, it is my opinion that the board of parole may continue undisposed cases either generally or for a definite or indefinite period of time with or without notation on the minutes of the board showing such a continuation.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3803.

APPROVAL, LEASE TO LAND IN LAWRENCE COUNTY, OHIO—THE CHARTIERS OIL COMPANY OF PITTSBURGH—H. E. POLLOCK.

COLUMBUS, OHIO, December 1, 1931.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Recently you submitted for my examination and approval as to legal form an oil and gas lease executed by you, under and in pursuance of Section 3209-1, General Code, to The Chartiers Oil Company of Pittsburgh,