

the General Code, requiring notice of such intended parole for the periods of time specified in said section. (Opinion No. 160, O. A. G. 1933, Vol. 1, p. 184, approved and followed.) And this rule applies, even though the trial court, through oversight or otherwise, sentences such prisoner for a definite term, or attempts to fix the minimum term at a definite number of years. (Opinions Nos. 76 and 1396, O. A. G. 1933, Vol. I, p. 69, and Vol. II, p. 1261, overruled.)

3. The parole and record clerk at the Ohio penitentiary is without authority to change or correct the judgment of a court sentencing a prisoner to the Ohio penitentiary, or to change or correct a commitment to the penitentiary issued pursuant thereto, or otherwise "to eliminate" the minimum sentence fixed by the trial court. The parole and record clerk may, however, place additional data upon his records to the end that the Pardon and Parole Commission may be advised when a prisoner, who through oversight or otherwise, has been sentenced to a fixed minimum term, shall have become eligible for parole under the law.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1622.

CITY FIREMEN—HOURS ON DUTY—WHEN EMPLOYED ON SCHEDULE TWENTY-FOUR CONSECUTIVE HOURS — FOLLOWED BY PERIOD OFF DUTY TWENTY-FOUR CONSECUTIVE HOURS—MAY IN EVERY FOURTEEN DAY PERIOD BE KEPT ON DUTY ONLY SIX TWENTY-FOUR HOUR PERIODS—SECTION 17-1a G. C., HOUSE BILL 648, 93rd GENERAL ASSEMBLY.

SYLLABUS:

Under the provisions of Section 17-1a of the General Code, as amended by House Bill No. 648 by the Ninety-third General Assembly, effective September 6, 1939, city firemen who are employed on a schedule of twenty-four consecutive hours on duty followed by a period of twenty-four consecutive hours off duty, may in every fourteen-day-period be kept on duty for only six twenty-four-hour periods.

COLUMBUS, OHIO, December 28, 1939.

HON. ROBERT E. FULLER, *Prosecuting Attorney, Findlay, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent communication wherein you request my opinion as follows:

"My attention has been directed to a question of the proper interpretation of Section 17-1a of the General Code (H. B. 648,

effective Sept. 6, 1939). Although this may seem to be a municipal rather than a county matter it does tie into the work of the Budget Commission in determining what will be a proper appropriation to approve for salary items for the Fire Department of a city.

The part of the section involved reads as follows:

'Sec. 17-1a. (Firemen; hours on duty; vacation.) It shall be the duty of the chief of the fire department of each city to divide the uniform force into not less than two platoons, and the said chief shall not keep a platoon of the uniform force on duty more than twenty-four consecutive hours, except in cases of extraordinary emergency, after which the platoon serving twenty-four hours shall be allowed to remain off duty for at least twenty-four consecutive hours. Each individual member of the platoons in addition to receiving a minimum of twenty-four hours off duty in each period of forty-eight hours shall receive an additional period of twenty-four consecutive hours off duty in each period of fourteen days.

QUESTION: Does this mean that each individual is entitled to an off duty period of seventy-two hours consecutively at some time during each fourteen days? To illustrate by example, suppose John Doe starts the period on Monday morning, works until Tuesday morning, is off duty until Wednesday morning, works until Thursday morning and is then instructed to take his extra twenty-four hours off duty. The twenty-four hours commencing Thursday morning he is regularly entitled to under the first clause of the section above quoted. The next twenty-four hours he is likewise entitled to under the last quoted part of the section. John Doe now claims the ensuing or third consecutive twenty-four hour period off duty under the first part of the statute. I think it probably boils down to this: Is John Doe expected to work six days out of each fourteen, or seven days out of each fifteen?

The situation in the city in question is such that if the six out of fourteen days rule applies it is claimed that it will be necessary to employ more men; if the seven out of fifteen days rule is correct it is likely that the vacation periods can be arranged without such necessity. Any enlightenment you can give us will be greatly appreciated."

Section 17-1a of the General Code, to which you refer in your communication, was amended by House Bill No. 648 by the Ninety-third General Assembly and became effective September 6, 1939.

Prior to the amendment of Section 17-1a, said section read as follows:

"It shall be the duty of the chief of the fire department of each city to divide the uniform force into platoons, and the said chief shall not keep a platoon of the uniform force on duty more than twenty-four consecutive hours, except in cases of extraordinary emergency, after which the platoon serving twenty-four hours shall be allowed to remain off duty for twenty-four consecutive hours. * * *"

You have quoted the provisions of Section 17-1a, *supra*, in your communication and therefore I shall not requote it in my opinion. The question propounded by you calls for a construction and interpretation of the statute as it read prior to its amendment and as it reads at the present time.

Prior to the amendment of Section 17-1a, *supra*, it is quite clear that a fireman working twenty-four consecutive hours and then having the next twenty-four consecutive hours off duty would work but seven days in each period of fourteen days. Construing Section 17-1a, *supra*, as it reads at the present time will result in a fireman working but six days in each period of fourteen days, providing the city for which he works has adopted the twenty-four-hour regulation for its fire department. My conclusion is reached by virtue of the clause in the statute which gives each fireman an additional period of twenty-four consecutive hours off duty in each period of fourteen days.

The language of Section 17-1a, *supra*, is clear and unambiguous and must be given effect according to its plain and obvious meaning. Section 26 of Black's Interpretation of Laws reads as follows:

"If the language of a statute is plain and free from ambiguity, and expresses a single, definite and sensible meaning, that meaning is conclusively presumed to be the meaning that the legislature intended to convey. In other words, the statute must be interpreted literally. Even though the court should be convinced that some other meaning was really intended by the lawmaking power, and even though the literal interpretation should defeat the very purposes of the enactment, still, the explicit declaration of the legislature is the law, and the courts must not depart from it."

Therefore, in specific answer to your inquiry, I am of the opinion that the provisions of Section 17-1a, General Code, applies where a city has adopted the twenty-four-hour regulation, and each individual fireman shall not work more than six days out of each fourteen.

Respectfully,

THOMAS J. HERBERT,
Attorney General.