

depends on the terms of the commutation. Courts have held that where it is apparent that the authority granting the commutation intended that no allowance for good behavior should be made, such intention will be given effect. This rule of law was applied in the case of *Meyers vs. Jackson*, 245 Mich. 692, where the terms of the commutation read as follows:

“So that the same will expire fifteen years from date of sentence.”

The court held that a prisoner whose life sentence was commuted by the governor to expire fifteen years from date of sentence is not entitled to any reduction of sentence for good behavior under 1 Compiled Laws, 1915, section 1732, in force when he was sentenced, since the date of expiration is fixed by executive order, and the statute has no application. Thus it seems to me that the governor, in granting commutation of a sentence in which the order read “to be released from confinement at the end of eleven years from beginning of sentence,” meant that the prisoner was not to be allowed time off the commuted sentence for good conduct and that the prisoner was to be released only at the end of eleven years of imprisonment. The language of the commutation, in my mind, is plain and unambiguous and there is no necessity for making any construction other than that of the natural meaning of the words “at the end of eleven years from beginning of sentence.” The governor, if he intended otherwise, would not have used such language and would, no doubt, have left out the words “end” and “from beginning of sentence” if he intended that the prisoner was to have the benefits of section 2163, General Code. It is apparent from the order of commutation, that the prisoner was to serve eleven full years from the beginning of his sentence and not otherwise.

In conclusion, it is therefore my opinion that where the expiration of a sentence in the commutation of a life sentence is fixed by the governor to be “at the end of eleven years from beginning of sentence,” the provisions of section 2163, General Code, are not applicable to the commuted sentence, and the prisoner is not entitled to any diminution for good behavior.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3022.

APPROVAL, SUPPLEMENTAL FINAL RESOLUTION FOR ROAD IMPROVEMENT IN LUCAS COUNTY, OHIO.

COLUMBUS, OHIO, March 5, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3023.

TOWNSHIP BOARD OF EDUCATION—VACANCY IN MEMBERSHIP—HOW FILLED—WHAT NECESSARY TO MAKE SELECTION VALID.

SYLLABUS:

Opinion of Attorney General, 1924, Vol. 1, p. 137, approved.

COLUMBUS, OHIO, March 5, 1931.

HON. MARCUS MCCALLISTER, *Prosecuting Attorney, Xenia, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“On the 5th day of January, 1931, three members of the Xenia Township Board of Education met to reorganize and transact business for the ensuing year. At the time there existed one vacancy, the other member being absent due to sickness. At this meeting, the name of A was proposed to fill the existing vacancy, the roll was called but B refused to vote, and withdrew from the meeting. Members C and D thereupon voted in favor of A; the new member, A, has assumed office and is at present meeting with the other board members.

The question is, can a township board of education, by a majority vote of a quorum, fill a vacancy in its board of education?

The members C and D are trying to justify their act by virtue of Section 4752 of the General Code of Ohio.

However, 4748, of the General Code of Ohio, involves a mandatory requirement in that a majority of the remaining members of the board of education, shall fill any vacancy. Opinions of the Attorney General, 1924, page 137.

On the other hand, Section 4752 provides that a majority of the members constitute a quorum, but further provides as to the election or appointment of officers, etc., that if upon a majority members of the board voting ‘aye,’ the motion shall be declared carried.

I have informed the Xenia Township Board of Education that 4748 is the controlling section in this controversy, and that 4752 does not apply to the filling of vacancies on the boards of education; however, if 4752 does apply, a majority vote of the remaining members of the board of education, nevertheless, will, in any event, be necessary to fill any vacancies.

Your opinion is earnestly solicited in this matter.”

In your letter you refer to a township board of education. I assume that your reference is to a rural or village board of education, since under the provisions of Section 4679, General Code, “The school districts of the state shall be styled, respectively, city school districts, exempted village school districts, village school districts, rural school districts and county school districts.”

Section 4748, General Code, contains express provisions as to how a vacancy in a board of education may be filled. This section is as follows:

“A vacancy in any board of education may be caused by death, non-residence, resignation, removal from office, failure of a person elected or appointed to qualify within ten days after the organization of the board or of his appointment, removal from the district or absence from meetings of the board for a period of ninety days, if such absence is caused by reasons declared insufficient by a two-thirds vote of the remaining members of the board, which vote must be taken and entered upon the records of the boards not less than thirty days after such absence. Any such vacancy shall be filled by the board at its next regular or special meeting, or as soon thereafter as possible, by election for the

unexpired term. A majority vote of all the remaining members of the board may fill any such vacancy."

Section 4752, to which you refer, contains the general provision that a majority of the members of a board of education shall constitute a quorum for the transaction of business. Of course, as a general rule, in the absence of special provisions a board may act by a majority of a quorum. The section does not, however, in my opinion, repeal Section 4748, *supra*, containing express provisions as to the vote necessary to fill a vacancy in a board of education, notwithstanding the fact that Section 4752, General Code, was enacted in its present form in 1917, a date subsequent to the enactment of Section 4748. Section 4752, General Code, was in force and effect in its present form at the time of the rendition of the opinion to which you refer appearing in Opinions of the Attorney General for 1924, Vol. I, p. 137. The syllabus of this opinion is as follows:

"A vacancy in a county board of education can only be filled in accordance with the provisions of Section 4748, which provides that such vacancy shall be filled by a majority vote of all the remaining members of the board."

I concur in the foregoing opinion, and it is therefore not necessary to consider the question of whether or not the withdrawal of one of the members of the board from the meeting resulted in there not being a quorum at the time it was sought to elect the new member to fill the vacancy.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3024.

APPROVAL, BONDS OF PLAIN TOWNSHIP RURAL SCHOOL DISTRICT, STARK COUNTY, OHIO—\$165,000.00.

COLUMBUS, OHIO, March 5, 1931.

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

3025.

APPROVAL, THREE LEASES TO LAND AT BUCKEYE LAKE AND LAKE ST. MARYS—MRS. ELLA HARLOW—ELLA W. TURNER—DAVID H. PIPER.

COLUMBUS, OHIO, March 5, 1931.

HON I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval, through the Chief of the Bureau of Inland Lakes and Parks in the Division of Conservation, three leases in triplicate of certain parcels of State reservoir lands, which