

fore follows that under the express provisions of Section 2131, *supra*, the several statutes defining penalties for the various felonies do not apply to the extent of such inconsistency and in so far as they relate to the commitment of male felons between the ages of sixteen and thirty years.

I note that in your letter you refer to the holding of Judge Hoffman of Hamilton County that imprisonment in the Ohio State Reformatory was not grounds for divorce within the meaning of Section 11979, General Code, which prescribes that "the imprisonment of either party in a penitentiary under sentence thereto" shall be a cause for divorce. I have not discussed this case for the reason that it is manifest that what is a penitentiary within the meaning of the section pertaining to divorce and alimony does not in any way affect the question of the place of imprisonment of persons convicted of felony.

In view of the foregoing and answering your questions specifically I am of the opinion that:

1. Your first question must be answered in the negative.
2. Robbery as defined by Section 12432, General Code, is a felony and by the express terms of Section 2131, General Code, "male persons between the ages of sixteen and twenty-one years convicted of felony shall be sentenced to the reformatory instead of the penitentiary."

Respectfully,
EDWARD C. TURNER,
Attorney General.

905.

PAROLE—CONCERNING PRISONER WHO HAS BEEN PAROLED FROM OHIO PENITENTIARY AND WHILE ON PAROLE COMMITS A NEW CRIME—LONDON PRISON FARM DISCUSSED.

SYLLABUS:

1. *In contemplation of law inmates of the London Prison Farm are inmates of the Ohio Penitentiary and it is immaterial whether they are paroled by the Ohio Board of Clemency from the London Prison Farm direct or retransferred to the Ohio Penitentiary before being released on parole.*

2. *When a prisoner sentenced to the Ohio Penitentiary and transferred to the London Prison Farm, has been subsequently paroled and while upon parole commits a new crime and is resentenced to the Ohio Penitentiary, the provisions of Section 2175, General Code, to the effect that he "shall serve a second sentence, to begin at the termination of his service under the first or former sentence, or the annulment thereof," apply.*

COLUMBUS, OHIO, August 23, 1927.

Ohio Board of Clemency, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of recent date which reads as follows:

"On July 9, 1927, Section 1835-1 became effective, creating the London Prison Farm as a separate institution, not under the control of the Warden of the Ohio Penitentiary. From time to time Ohio Penitentiary prisoners

have been transferred according to law to that institution, and, eventually, a number of them have been paroled from the London Prison Farm. Of those paroled a number have become violators to the extent of committing another felony and have been returned to prison; among them No. 45882, 52896, 53083, 53310, 54250 and 54671, or six in all.

Under the law each of these men was committed to the Ohio Penitentiary and at once began serving a new sentence. In this way each one of them escaped the full penalty imposed in Section 2175 which prescribed that such a convict shall serve a second sentence to begin on the termination of his service under the first or former sentence. This occurs because the commitment of a prisoner under sentence can not be made to the London Prison Farm, but must be made to the Ohio Penitentiary. The six prisoners thus committed have up to this time escaped the full penalty for committing a felony while on parole and have thus been favored as compared with the other violators.

It should be noted that none of these six prisoners have been brought before the board for any action by the Warden of the Ohio Penitentiary, but the status of the prisoners has been brought to our attention by the Superintendent of the London Prison Farm.

Question No. 1. What action, if any, should the Ohio Board of Clemency take in order to correct this anomalous situation?

Question No. 2. In view of the condition as indicated above should prisoners be paroled from the London Prison Farm or should they be retransferred to the Ohio Penitentiary before they are released on parole?

You state that Section 1835-1, General Code, became effective on July 9, 1927. The act in which Section 1835-1 was enacted was passed on March 27, 1925, (111 v. 108) and became effective on and after July 9, 1925. The act is entitled:

“An Act to amend Section 1835 and to enact supplemental Section 1835-1 of the General Code, relative to the institutions under the control of the department of public welfare.”

Section 1835, General Code, provides in part as follows:

“* * * The department of public welfare shall have full power to manage and govern the following institutions:

* * * * *

The Ohio state reformatory;
The Ohio reformatory for women;
The Ohio penitentiary;
The London prison farm.

* * * * *

Section 1835-1, General Code, provides:

“The London prison farm shall be used for the better class of prisoners and devoted to the reformation and the industrial and vocational training of this class. Such prisoners shall be transferred from the Ohio penitentiary upon the order of the director of public welfare. Such transfers shall be made upon the recommendation of the warden of the Ohio penitentiary and the board of clemency. The superintendent of the London

prison farm shall be vested with the same authority and be governed by the same laws as now govern the warden of the Ohio penitentiary."

As provided in the section last above quoted it will be noted that the London Prison Farm is to be used for the better class of prisoners incarcerated in the Ohio Penitentiary and in which repressive and punitive measures are subordinated to industrial and vocational training. Such prisoners sentenced to the Ohio Penitentiary who are of the better class and amenable to the reformation and training, for which the London Prison Farm affords an opportunity, upon the recommendation of the warden of the Ohio Penitentiary and the Ohio Board of Clemency, shall be transferred thereto upon the order of the Director of Public Welfare.

That the Prison Farm is a part of the Ohio Penitentiary in name as well as in fact is shown by the language of different appropriation items contained in various appropriation acts passed by the recent General Assembly. In House Bill No. 502, passed by the 87th General Assembly at page 171, for example, appears the following item making a reappropriation:

"London Prison Farm G 2. Buildings—Construction of New Penitentiary (H. B. 517) * * * "

The 86th General Assembly in House Bill No. 264, making supplementary appropriations, appropriated \$50,000.00 to the Department of Public Welfare for the "Construction New Penitentiary" at the "New Prison Farm" (page 11), while in the act making general appropriations \$300,000.00 was appropriated under the heading "New Prison Farm" for "Construction New Penitentiary", the Legislature further providing that the moneys appropriated in this item might be expended by the Department of Public Welfare in its discretion and without conforming to any plans adopted by the *Penitentiary Commission*. (H. B. No. 517, page 101).

In disposing of the questions that you present it is particularly significant to note that whereas the legislature has vested power in the several Courts of Common Pleas to commit felons direct to the Ohio State Reformatory, the Ohio Reformatory for Women and the Ohio Penitentiary, it vested no such power as regards the London Prison Farm.

From the above, it seems clear that although the institution known as the London Prison Farm is geographically situated separate and apart from the Ohio Penitentiary and is managed by a superintendent vested with the same authority and governed by the same laws as govern the warden of the Ohio Penitentiary there can be no question but that it is appurtenant to the Ohio Penitentiary and in contemplation of law the Ohio Penitentiary itself. In other words the legislature has done nothing more than to authorize and provide a different place of confinement in a physical sense for the benefit of the better class of prisoners who, however, in contemplation of law are prisoners of the Ohio Penitentiary and subject to the benefits and liabilities of the laws appertaining thereto.

The same laws that govern the release, parole or probation of prisoners of the Ohio Penitentiary govern the release, parole or probation or prisoners of the Ohio Penitentiary who have been transferred to the London Prison Farm.

Sections 2174 and 2175, General Code, respectively provide as follows:

Sec. 2174. "A prisoner violating the conditions of his parole or conditional release, having been entered in the proceedings of the board of managers and declared to be delinquent, shall thereafter be treated as an escaped prisoner owing service to the state, and, when arrested, shall serve the unexpired period of the maximum term of his imprisonment. The

time from the date of his declared delinquency to the date of his arrest shall not be counted as a part of time served."

Sec. 2175. "A prisoner at large upon parole or conditional release committing a new crime, and re-sentenced to the penitentiary, shall serve a second sentence, to begin at the termination of his service under the first or former sentence, or the annulment thereof."

These sections were construed in a recent opinion of this department addressed to the Ohio Board of Clemency, being Opinion No. 727, dated July 11, 1927, Opinions, Attorney General, 1927, the syllabus of which reads:

"1. Under the provisions of Section 2174, General Code, where a prisoner has violated the conditions of his parole or conditional release, and the Ohio Board of Clemency has declared such prisoner to be delinquent and entered such facts in the proceedings of the board, such prisoner shall thereafter be treated as an escaped prisoner owing service to the state and, when arrested, shall serve the unexpired period of the maximum term of his imprisonment and the Ohio Board of Clemency is without authority again to restore such prisoner to parole.

2. The Ohio Board of Clemency is without authority to 'annul' a sentence as that word is used in Section 2175, General Code."

In view of the foregoing and answering your questions specifically it is my opinion:

1. With respect to those prisoners sentenced to the Ohio Penitentiary transferred to the London Prison Farm and paroled and who, while upon parole, commit a new crime and are resentenced to the Ohio Penitentiary, the provisions of Section 2175, General Code, apply, viz., that he "shall serve a second sentence, to begin at the termination of his service under the first or former sentence, or the annulment thereof."

2. I see no reason why retransfer from the London Prison Farm to the Ohio Penitentiary should be made for the sole purpose of parole as above stated. In contemplation of law inmates of the London Prison Farm are inmates of the Ohio Penitentiary and it is immaterial whether they are paroled by the Ohio Board of Clemency from the London Prison Farm direct or retransferred to the Ohio Penitentiary before being released on parole.

Respectfully,
EDWARD C. TURNER,
Attorney General.

906.

APPROVAL, BONDS OF THE VILLAGE OF PARMA, CUYAHOGA COUNTY
—\$133,080.30.

COLUMBUS, OHIO, August 23, 1927.