3824.

MUNICIPALITY—WHEN BOARD OF PUBLIC AFFAIRS DISPOSES OF PLANTS WHICH IT MANAGED, SUCH ACTION TERMINATES LEGAL EXISTENCE OF SUCH BOARD.

SYLLABUS:

When by proper action of council a board of public affairs disposes of plants which it was created to manage, and there are no longer any functions to be performed by such board, such action terminates the legal existence of such board.

COLUMBUS, OHIO, November 19, 1926.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—In your recent communication you request my opinion as follows:

> "Section 4357 G. C. provides in part for the creation of a board of public affairs in each village owning or operating water works, electric light plant, etc., and further provides that members of such board shall each be elected for a term of two years.
>
> In August, 1926, the village of ———— through its board of public affairs sold its electric light plant and leased the land on which said plant was located, to a public utility company, said company to pay a yearly rental for such land. The company has taken over and is operating the plant at this date and the following questions have been raised:
>
> *First*—Does this arrangement require the perpetuation of the board of public affairs for the purpose of collecting the annual rental from the public utility company?
>
> *Second*—If the answer to the above is negative, does the present board of public affairs continue in office for the term for which they were elected, to wit, two years from January 1, 1926?"

Assuming that the sale to which you refer has been duly authorized by council of the village, it would appear to do away with the necessity of a board of public affairs. It is believed that such action would operate as a repeal of the ordinance creating such board, and the effect of the sale would be to abolish the board.

In the case of *State ex rel.* vs. *Donahey,* 100 O. S. 104, it was held:

> "The major purpose for which a board has been created having failed by reason of a repeal of the law creating the purpose, the board will not be continued for the performance of a minor, incidental function."

Also, in the case of *State ex rel. Maxwell* vs. *Schneider,* 103, O. S. 492, it was held:

> "When, pursuant to the provisions of section 4736, General Code, a new school district is created by a county board of education by proceedings in conformity with the requirements of the law, and the members of a board of education of a newly-created district are duly appointed and qualified, and such board duly organized as therein provided, the duties and authority of members of a board of education of a former school district which has been absorbed by the creation of a new district are *ipso facto* terminated."

Further, in the case of *State ex rel Schmidt* vs. *Colson,* 1 Ohio App. 438, it was held:

> "The repeal of an ordinance, passed pursuant to the provisions of section 4404, General Code, establishing a board of health, abolishes all appointive positions under such board."

In this case the board of health was created under the provisions of section 4404, and a clerk appointed; afterward the council repealed the ordinance, and the clerk contended that in spite of such repeal, he was entitled to his salary from the time of the repeal of the ordinance to the end of his appointed term.

From an analysis of the foregoing cases, it is believed that when the action of an authority which creates a board, in effect abolishes it by removal of all the duties to be performed, the effect is to abolish the board.

You are therefore advised that if the action of the council, and the further action of the board of public affairs are such as to render unnecessary any service by such officers, and no functions now exist to be performed by them, under the authorities heretofore cited, such board should cease to exist.

Respectfully,
C. C. CRABBE,
Attorney General.

3825.

SENTENCES OF INMATES OF OHIO PENITENTIARY MAY NOT BE SUBSEQUENTLY SUSPENDED BY THE SENTENCING COURT.

SYLLABUS:

Sentences of persons sentenced to the Ohio Penitentiary may not be subsequently suspended by the sentencing court.

COLUMBUS, OHIO, November 19, 1926.

HON. P. E. THOMAS, *Warden Ohio Penitentiary, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

> "I am asking your guidance in the case of Charles Summers No. 55327, now confined in this institution, admitted from Wayne County, July 1st, 1926, serving one to three years on three sentences of Drawing Check without Credit, case numbers 4611—12—13.
>
> The journal entries in these cases state that they are to run concurrently.
>
> Under a ruling of Attorney General Hogan, dated February 9th, 1914, I am obliged to enter this man on our records as serving the minimum of each sentence and the maximum which would mean that he is now serving a minimum sentence of three years and a maximum of nine years.
>
> I have this day received journal entries in this case requesting suspension of sentence in cases number 4612-13, which I am enclosing for your guidance."

Your communication raises two questions. The first one is whether prisoners sentenced to the penitentiary for two or more separate felonies can be sentenced so that the sentences run concurrently. The second question raised is whether after sentence by the court the court may change such order and suspend the operation of the sentences?