

"The Ohio Board of Clemency is without authority to allow a prisoner to go upon parole outside the building and inclosure of the penitentiary unless and until such prisoner shall have served within the penitentiary, the minimum term of imprisonment fixed by the trial court for the felony of which the prisoner was convicted."

As above pointed out a commutation substitutes a new penalty in place of the original and the original penalty cannot be restored. In other words the commuted sentence becomes the penalty fixed by law. In the example, *supra*, the penalty fixed by law, after commutation of sentence was granted, would be a sentence of not less than three nor more than twenty-five years.

After the expiration of the three year period "A" would be eligible to parole, and the Ohio Board of Clemency would have the power and authority to parole him just as though the sentence originally imposed had been an indeterminate sentence of three to twenty-five years. If "A" were in fact paroled and violated the conditions of his parole, in such a case he could be returned to custody according to law.

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

1. By the provisions of Article III, Section 11 of the Constitution of Ohio the Governor has power, after conviction, to grant commutations for all crimes and offenses, except treason and cases of impeachment, upon such condition as he may think proper. While the conditions attached to the granting of a pardon may be either conditions precedent or conditions subsequent, the conditions upon which a commutation may be granted must be conditions precedent. (See Opinion No. 1425, Opinions, Attorney General for 1927, dated December 23, 1927).

2. In its legal acceptance, a commutation is a change of punishment from a higher to a lower degree, in the scale of crimes and penalties fixed by the law. As soon as the commutation is made, the new penalty becomes the one fixed by law, and the original penalty cannot be restored.

3. Where a commutation or partial pardon has been granted by the Governor to a prisoner convicted of a felony so as to render such prisoner eligible for parole by the Ohio Board of Clemency, upon serving the minimum term provided in such commutation or partial pardon, such person may be paroled by such Board the same as though the commuted sentence was originally imposed.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1928.

APPROVAL, LEASES TO OHIO CANAL, MIAMI & ERIE CANAL, PORTAGE LAKES AND LAKE ST. MARYS LANDS.

COLUMBUS, OHIO, April 2, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter dated March 27, 1928, in which you enclose the following leases, in triplicate, for my approval:

<i>Ohio Canal</i>	<i>Valuation</i>
J. F. Amberg, cottage site.....	\$125 00
J. R. Bender, cottage site.....	250 00
H. F. Bertram and Harry Williams, cottage site.....	250 00
Henry F. Bertram, cottage site.....	300 00
E. N. and Glen C. Brady, cottage site.....	250 00
Mabel Caudill, land lease.....	200 00
C. S. Cameron, oil and gas lease, 1/8 royalty, bonus.....	130 00
Silas G. Cole, land lease.....	250 00
J. Frost Davis, cottage site.....	250 00
Ida B. and Mary F. Dever, land and cottage site.....	400 00
Mattie G. Dever, land lease.....	350 00
John Doley, cottage site.....	300 00
Henry Fox, land lease.....	666 67
Ben Harness, land lease.....	400 00
Emma Harwood, land lease.....	125 00
O. L. and Hazel Knechtly, cottage site.....	150 00
The Ohio Utilities Company, pole line.....	3,266 67
Portsmouth Outdoor Adv. Co., land lease.....	333 34
Chas. W. Sisterhen, land lease.....	500 00
S. A. Skelton, cottage site.....	150 00

<i>Miami & Erie Canal</i>	<i>Valuation</i>
A. C. & Y. R. R. Company, water lease.....	\$973 34
Clem A. Crusey, cottage site, etc.....	800 00
Andrew J. Eby, land lease.....	1,000 00
Lock Two Grain and Milling Co., land lease.....	200 00
Toledo and Cincinnati R. R. Co., land lease (Troy).....	500 00
Toledo and Cincinnati R. R. Co., land lease (Sidney).....	500 00
A. E. Varley, sand and gravel concession.....	20,000 00

<i>Portage Lakes</i>	<i>Valuation</i>
Dr. E. Z. Alspach, boat house, etc.....	\$150 00
H. A. Dellenberger, boat house, etc.....	200 00
C. G. Dietz, boat house, etc.....	150 00
C. G. Dietz, boat house, etc.....	200 00
T. L. Myers, dock landing.....	500 00
R. A. Piquignot, boat house, etc.....	333 34

<i>Lake St. Marys</i>	<i>Valuation</i>
J. F. Kaufman, cottage site, etc.....	\$900 00
W. G. Morrison, cottage site, etc.....	600 00

I have carefully examined said leases, find them correct as to legality and form, and am therefore returning same with my approval endorsed thereon.

Respectfully,
EDWARD C. TURNER,
Attorney General.