

thought, you are advised that immediately under your signature the following should appear instead of the word "Director" now found therein, to wit, "Superintendent of Public Works and Director of said Department."

Although in and by the terms of this instrument, the property above described is transferred to the Ohio State Archaeological and Historical Society for a term of ninety-nine years, renewable forever, subject to the conditions of avoidance therein provided for, this instrument is not required to be acknowledged. However, your execution of this instrument should be witnessed and the signatures of two witnesses to your execution of this instrument should appear on the same.

Subject to the corrections with respect to the execution of this instrument above noted, the same is hereby approved, as is evidenced by my approval endorsed upon the instrument and upon the duplicate and triplicate copies thereof.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

3402.

GOVERNOR—MAY ISSUE PARDON RELEASING PERSON FROM FINE AND COSTS AS WELL AS IMPRISONMENT.

*SYLLABUS:*

*The Governor, by virtue of section 11 of Article III of the Ohio Constitution, may issue a pardon which releases a person from payment of a fine and the cost of prosecution as well as from any imprisonment.*

COLUMBUS, OHIO, November 5, 1934.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"Prior to January, 1932, a defendant was sentenced by the Probate Court for violation of the liquor law to pay a fine and costs, and was committed to jail until the fine and costs were paid or secured to be paid.

Some time later, a note and mortgage were given to secure the payment of the fine and costs, whereupon the defendant was released from the jail.

Later, under date of July 17, 1934, the Governor pardoned this defendant.

QUESTION: May the Probate Judge release the mortgage, thereby releasing payment of the fine and costs?

We are enclosing herewith a copy of the Governor's pardon."

Section 11 of Article III of the Ohio Constitution, relative to the powers of the Governor, reads in part as follows:

"He shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, except treason and cases of impeachment, upon such conditions as he may think proper; subject, however, to such regulations, as to the manner of applying for pardons, as may be prescribed by law. \* \* \*"

You enclose a copy of the pardon issued by the Governor of this state. In so far as material, this pardon reads as follows:

"WHEREAS, on or about July 3, 1930, S. K. was convicted of the crime of UNLAWFUL POSSESSION OF INTOXICATING LIQUOR and a fine imposed. Thereupon, and in default of the payment thereof, and of the costs, he was committed to PORTAGE COUNTY WORKHOUSE, until such fine and costs were paid; and

WHEREAS, the pardon of S. K. has been recommended by PORTAGE JUDGE and PROSECUTING ATTORNEY OF PORTAGE COUNTY, OHIO.

THEREFORE, by virtue of the authority vested in the Governor, by the Constitution and statutes of the State, I do hereby grant to the said S. K. a PARDON, and do by these presents release him from confinement under the sentence and commitment aforesaid;"

Your question amounts to whether or not the pardon in question releases the prisoner from the payment of the fine and the costs, or merely prevents any further imprisonment.

In the present situation the person in question is not imprisoned. If the pardon does not release him from the fine or the costs, or both, it is practically worthless. It has been generally held that a pardon of a person who is serving a sentence in prison not only releases the prisoner from the serving of the sentence of imprisonment but the fine as well. In this connection, see an interesting note in 74 A. L. R. 1118, and the cases therein cited.

In the case of *Blanchard vs. State, Wright's Report 377*, it was apparently intimated that a pardon by the Governor did not only release the defendant from the imprisonment but from the costs as well. The only case of any importance upon this subject in Ohio is the case of *Libby vs. Nicola*, 21 O. S. 414. The syllabus of that case reads as follows:

"A person who has been convicted and sentenced to the penitentiary for manslaughter, and against whom a judgment has been rendered for the costs of prosecution, obtains from the governor a pardon, in which, after reciting the sentence of imprisonment, but making no reference to the judgment for costs, the governor declares that a general pardon is granted to such person 'from the sentence aforesaid'—HELD, that such pardon does not operate to release the judgment for costs."

The following language appears at page 420:

"The case of *Blanchard vs. The State (Wright's R. 377)*, is cited in support of the plaintiff. We have examined that case and the authority cited in support of the decision. The terms of the pardon do not appear in the report. We cannot say, therefore, whether our opinion as to the

construction of the terms of the pardon in this case is in conflict with that decision or not. It is to be observed, however, that the case was decided before the passage of the acts to which we have referred, in the light of which the pardon in the present case is to be construed.

We do not question the authority of the governor, in granting a pardon, to release the uncollected costs that may be coming to the State. What we hold is, that in the present instance he is not shown to have done so."

The following statement appears in the annotation in 74 A. L. R. at page 1121:

"It would seem that cases like *Blanchard vs. State* (1833) Wright (Ohio) 377, holding that a general pardon by the governor acquitted the defendant of all the penalties annexed to the conviction, including the part of the judgment for costs as well as the part imposing imprisonment, would, a fortiori, support the proposition that fines imposed would be included in so far as they inure to the benefit of the public, and might be released. But a distinction between fines and costs logically exists, so far as the present question is concerned, and the authority of the Blanchard Case seems doubtful, in view of the later decision in *Libby vs. Nicola* (1871) 21 Ohio St. 414, which holds that the effect of the pardon was not to release the defendant from the part of the judgment for costs,—the court taking the view that, while the authority of the governor, in granting a pardon, to release the uncollected costs that might be owing to the state, was not questioned by it, the pardon in this case had not undertaken to effect such release."

From the above it would appear that there is no doubt that the Governor may in the present situation release the accused from the fine and the costs, the only question being whether or not the Governor in his pardon made his intent clear in this matter. It is significant that a document in the nature of a pardon or commutation must be construed most favorably towards the prisoner where its terms are ambiguous. *United States vs. DeBruyn*, 8 Fed. (2d) 319.

The pardon itself recites that:

"Thereupon, and in default of the payment thereof, and of the costs, he was *committed* to PORTAGE COUNTY WORKHOUSE, until such fine and costs were paid;" (Italics the writer's.)

That portion of the pardon wherein the intent of the Governor is to be gathered reads:

"THEREFORE, by virtue of the authority vested in the Governor, by the Constitution and statutes of the state, I do hereby grant to the said S. K. a PARDON, and do by these presents *release him from confinement under the sentence and commitment aforesaid.*"

It would appear that a liberal construction of the pardon in question would indicate that the Governor intended that the accused should be released from paying both the fine and the costs of the prosecution. While the question is not altogether free from doubt, it would follow that any ambiguity should be resolved in favor of the person pardoned. It is significant to note that the language used in the pardon referred to in the Libby case, *supra*, is by no means as favorable towards the accused as that used in the present pardon,

In view of the above and in specific answer to your question, it is my opinion that the probate judge in question may release the mortgage, thereby releasing payment of the fine and of the costs.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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3403.

APPROVAL—ABSTRACT OF TITLE, WARRANTY DEED, ENCUMBRANCE RECORD NO. 4 AND CONTROLLING BOARD CERTIFICATE RELATING TO THREE TRACTS OF LAND IN HANOVER TOWNSHIP, ASHLAND COUNTY, OHIO—SUSIE RAUB.

COLUMBUS, OHIO, November 5, 1934.

HON. CARL E. STEEB, *Secretary, Board of Control, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval an abstract of title, warranty deed, encumbrance record No. 4 and Controlling Board certificate relating to three tracts of land owned of record by one Susie Raub in Hanover Township, Ashland County, Ohio, which tracts of land are more particularly described as follows:

Being a part of the northwest quarter of the northeast quarter of section number eighteen (18), township nineteen (19), range sixteen (16) and beginning at the southwest corner of said lot; thence east on the south line 80 rods to the southeast corner; thence north on the east line 40 rods to a stake; thence west  $66 \frac{2}{3}$  rods to a stake; thence south 18 rods to a stake; thence west  $13 \frac{1}{3}$  rods to the west line of said quarter section; thence south 22 rods along the west line of said quarter section to the place of beginning, containing  $18 \frac{1}{2}$  acres of land.

Also a part of the northeast quarter of section eighteen (18), township nineteen (19), range sixteen (16) commencing at the northwest corner of said quarter; thence east 80 rods to a stake; thence south 40 rods to a stake; thence west  $66 \frac{1}{2}$  rods to a stake; thence south 18 rods to a stake; thence west  $13 \frac{1}{2}$  rods to a stake; thence north 58 rods to the place of beginning. Excepting therefrom 12 acres off of the west end of said premises, the balance to contain nine and ninety hundredths acres (9.90). And in both tracts 29.11 (twenty-nine and eleven hundredths acres).

Also land situated in said Township of Hanover, County of Ashland, and State of Ohio, and known as the south half of the southeast quarter of section seven (7), township nineteen (19) and range sixteen (16) containing eighty acres more or less.

Upon examination of this abstract of title, which at my request has been corrected by further information showing the release of a judgment in the sum of \$401.63 and accrued costs obtained by the LaRue Bank Company against Susie