

2704

1. MALE JUVENILE DELINQUENT OVER 16 YEARS OF AGE COMMITTED TO OHIO STATE REFORMATORY, MAY BE RELEASED BY SUPERINTENDENT OF THE INSTITUTION UPON GRANTING OF PAROLE BY PARDON AND PAROLE COMMISSION, PROVIDING THE JUVENILE IS UNDER 21 YEARS OF AGE.
2. COMMISSION MAY GRANT FINAL RELEASE IF PAROLLEE HAS PERFORMED OBLIGATION OF PAROLE, BUT SUCH FINAL RELEASE MAY NOT BE GIVEN UNTIL ONE YEAR AFTER RELEASE FROM REFORMATORY, UNLESS SAID PRISONER IS 21 YEARS OF AGE. §§ 2151.35 R.C., 5143.04, R.C.

SYLLABUS:

1. A male juvenile delinquent over sixteen years of age who, pursuant to Sections 2151.35 and 5143.04, Revised Code, has been committed to the Ohio state reformatory until he arrives at the age of twenty-one years, unless sooner released for satisfactory behavior and progress in training, may be released by the superintendent of such institution upon the granting of a parole by the pardon and parole commission.

2. Such a paroled prisoner may, pursuant to Section 2965.17, Revised Code, be granted a certificate of final release by the pardon and parole commission if he has faithfully performed all of the conditions and obligations of his parole and has obeyed all of the rules and regulations adopted by the pardon and parole commission; but such final release may not be issued before one year after the release from the reformatory unless the said prisoner has attained the age of twenty-one years.

Columbus, Ohio, December 22, 1961

Hon Joseph E. Doneghy,
Chairman—Ohio Pardon & Parole Commission
1 South Fourth St., Columbus 15, Ohio

Dear Sir:

I have before me your request for my opinion which poses the following question:

“May a male juvenile delinquent over sixteen years of age who has been committed to the Ohio State Reformatory to serve from one year until reaching the age of twenty-one years, and who

has subsequently been paroled and has served more than one year on parole and has faithfully performed all of the conditions and obligations of his parole, be granted a final release by the Pardon and Parole Commission under Sec. 2965.17 of the Revised Code, even though he has not attained the age of twenty-one years?"

Under Section 2151.35, Revised Code, a juvenile court may commit a male child over sixteen years of age, who has committed an act which if committed by an adult would be a felony, to the Ohio state reformatory.

Upon commitment to the reformatory, Section 5143.04, Revised Code, becomes applicable. This section reads:

"A male child over sixteen years of age committed by a juvenile court to the reformatory shall be received by the superintendent of the reformatory. After a child so committed has been received, sole control over such child shall be in the reformatory and the jurisdiction of the juvenile court over such child shall cease. The superintendent shall provide for the education of such child in such branches of industry, agricultural or otherwise, as he shall determine, having in view his reformation and preparation for usefulness. Such child shall be committed until he arrives at the age of twenty-one years *unless sooner released for satisfactory behavior and progress in training.*" (Emphasis added).

It should be noted that the superintendent of the reformatory is given "sole control over such child," and that the child must remain committed until he reaches the age of majority unless sooner released. The section does not say by whom he be sooner released, nor is the method of determining his right to parole specifically set forth. Since he is under the sole control of the superintendent, it is logical to assume that he should be released by the superintendent. As to parole, Section 5143.05, Revised Code, says:

"Courts imposing sentences to the reformatory shall make them general, and not fixed or limited in their duration. The term of imprisonment shall be terminated by the pardon and parole commission, as authorized by sections 2965.09 to 2965.18, inclusive, of the Revised Code, but the term of such imprisonment shall not exceed the maximum term, nor be less than the minimum term provided for such felony."

Here the reference is to "sentences" having minimum and maximum terms for the commission of felonies, whereas your letter deals with a minor who has been found to be a delinquent child for which he has been committed, not sentenced, until he reaches majority unless sooner released.

Although no specific method of determining the right to parole of a committed delinquent child has been found, it seems reasonable to assume that in such a case, the superintendent of the reformatory would use the state agency created for the express purpose of determining eligibility to parole, that is, the pardon and parole commission. This view receives substantial support from Section 2965.09, Revised Code, the pertinent portion of which reads:

“The pardon and parole commission may exercise its functions and duties in relation to the pardon, commutation, or reprieve of a convict upon direction of the governor or upon its own initiative, and in relation to the parole of a prisoner eligible for parole, upon the initiative of the head of the institution wherein the prisoner is confined, or upon its own initiative. * * *”

The first portion of such duties is limited to convicts. The term “convict” is defined in Section 2965.01 (G), Revised Code, as a person who has been convicted of a felony under the laws of this state. The minor whose release is presently in question was not convicted of a felony. He was merely found to be a delinquent child. Yet, he has been a prisoner, for a prisoner is defined in Section 2965.01 (H), Revised Code, as a person who is in actual confinement in a state penal or reformatory institution. It therefore appears that the pardon and parole commission may exercise its functions and duties in relation to the parole of a delinquent child committed to the Ohio state reformatory, when the child, through satisfactory behavior and progress in training, has become eligible for parole, upon either the initiative of the superintendent of the Ohio state reformatory, or upon the commission’s own initiative.

Having concluded that the pardon and parole commission may order the parole of a committed delinquent child and thereby cause the superintendent of the reformatory to release such child from actual confinement, it then appears that the commission may make a final order of discharge and issue a certificate of final release to such parolee. Section 2965.17, Revised Code, provides in part:

“When any paroled prisoner has faithfully performed all of the conditions and obligations of his parole and has obeyed all of the rules and regulations adopted by the pardon and parole commission he shall be deemed to have served his full sentence and the commission shall enter upon its minutes a final order of discharge and issue to the paroled prisoner a certificate of final release, but no such order shall be made in any case within a period

of less than one year after the prisoner is released from the institution on parole unless the maximum sentence shall have expired earlier thereto. * * *

Although the word "sentence" is used therein, it must be assumed that the treatment of a parolee delinquent child would not be more severe than that of a paroled convict. Furthermore, the reference is to "any paroled prisoner," thereby including both convicts and committed delinquents. This view is supported by opinion No. 1544, Opinions of the Attorney General for 1939, page 2274, where, under comparable statutes, it was held in the second paragraph of the syllabus:

"2. That part of Section 2131-1, General Code, relating to the parole of juvenile prisoners confined in the Ohio State Reformatory and committed to such institution by the juvenile courts, and to the supervision and recommitment of such parolees, was repealed by the Pardon and Parole Code of Ohio (Sections 2209 to 2209-23, General Code), and the Pardon and Parole Commission has full, complete and exclusive jurisdiction over the parole of such prisoners and the supervision and recommitment of such parolees."

In conclusion, and in specific answer to your inquiry, it is my opinion and you are advised:

1. A male juvenile delinquent over sixteen years of age who, pursuant to Sections 2151.35 and 5143.04, Revised Code, has been committed to the Ohio state reformatory until he arrives at the age of twenty-one years, unless sooner released for satisfactory behavior and progress in training, may be released by the superintendent of such institution upon the granting of a parole by the pardon and parole commission.

2. Such a paroled prisoner may, pursuant to Section 2965.17, Revised Code, be granted a certificate of final release by the pardon and parole commission if he has faithfully performed all of the conditions and obligations of his parole and has obeyed all of the rules and regulations adopted by the pardon and parole commission; but such final release may not be issued before one year after the release from the reformatory unless the said prisoner has attained the age of twenty-one years.

Respectfully,
 MARK McELROY
 Attorney General