

Ohio Penitentiary. A criminal law which changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed is considered as being *ex post facto* and therefore unconstitutional. On the other hand, a criminal law is not *ex post facto* when the punishment for a crime already committed is lessened and not increased. See 6 R. C. L. 299, 12 C. J. 1097.

The question of whether or not legislation of this type is retroactive has been settled by our Supreme Court in the case of *State, ex rel. Attorney General, vs. Peters*, 43 O. S. 629, the syllabus of which reads as follows:

“An act to amend an act entitled, “an act relating to the imprisonment of convicts in the Ohio Penitentiary, and the employment, government, and release of such convicts by the board of managers,” passed March 24, 1884, passed May 4, 1885 (82 Ohio L. 236), authorizes the board of managers to establish rules and regulations under which certain prisoners then or thereafter under sentence, who had served the minimum term provided by law for the crime for which they were convicted, may be allowed to go upon parole outside of the buildings and inclosures, but to remain while on parole in the legal custody and under the control of the board, and subject at any time to be taken back within the inclosure of the institution, is not an interference with the executive or judicial powers conferred on these departments by the constitution of the state.”

The court, at page 651, said:

“It may be claimed that this act, so far as it affects past sentences, is retroactive, and therefore unconstitutional. This can not be, as by this provision the legislature is only prevented from interfering with the vested rights of individuals.

It does not hinder the state from divesting itself of any right of claim of its own. The only party who could object is the prisoner, and he can not, where it is clearly for his benefit. If the provisions of the law are not *ex post facto* in their nature, he can not complain.”

See also Opinions of the Attorney General, 1929, page 1593, at page 1595.

Specifically answering your question, I am of the opinion that the provisions contained in Section 2166, as amended, and supplemental Section 2166-1, as enacted, in 114 Ohio Laws, Senate Bill 68, apply to prisoners already confined in the Ohio Penitentiary as well as those who may be hereafter sentenced to that institution.

Respectfully,

GILBERT BETTMAN,

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3568.

APPROVAL, BONDS OF WYANDOT COUNTY, OHIO—\$4,590.00.

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*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*