

for parole until he has served the minimum term of his sentence and upon recommendation of designated penal officials. See sections 2132, 2148-9, 2160, 2166, 2141, 2148-10 and 2171, General Code. Under these statutes paroles may be granted only to those prisoners who have served the minimum term of their imprisonment. This being so, it appears to me that even if the Governor, by virtue of the Weaver case, *supra*, had the power to parole a prisoner, it could only be exercised when the prisoner had been incarcerated in a penal institution and after he had served at least the minimum term of imprisonment provided by law.

It is therefore my opinion that:

1. The Governor has the power to pardon a person convicted of a crime, either before sentence or before incarceration in a penal institution.

2. The Governor can exercise his power of commutation at any time after a person has been convicted and sentenced for committing a crime.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

3240.

APPROVAL, NOTES OF McARTHUR-HUNTSVILLE VILLAGE SCHOOL DISTRICT, LOGAN COUNTY, OHIO—\$5,500.00.

COLUMBUS, OHIO, May 20, 1931.

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

3241.

FIREMEN'S PENSION FUND OF TOLEDO—COMPOSED PARTLY OF MONIES RECEIVED FROM REPEALED LAW WHICH IMPOSED TAX ON FOREIGN INSURANCE COMPANIES—RULE PROVIDING FOR USE OF SUCH FUND FOR FUNERAL EXPENSES OF FIREMEN, VALID.

*SYLLABUS:*

*The firemen's pension fund of the City of Toledo, composed, in part, of collections made from the tax on foreign insurance companies, may be used for the purpose of paying funeral expenses of members of the fire department in pursuance of a proper rule to that effect adopted by the board of trustees of the firemen's pension fund.*

COLUMBUS, OHIO, May 21, 1931.

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

GENTLEMEN:—Acknowledgment is made of your recent communication requesting my opinion upon a question submitted to you by one of your examiners. The letter from your examiner reads in part, as follows:

“The Firemen's Pension Trustees of Toledo have investments in an amount of \$58,650.00, most of the income for which investments was re-

ceived by them through the old law requiring fire insurance companies to pay a certain percentage of their income to fire and police pension boards of the State. The Toledo Fire Pension Trustees have increased their investment holdings from time to time with the surplus interest earnings on the investments.

They now propose to amend their pension rule No. 18, as follows:

'A funeral expense not to exceed \$350.00 shall be paid at the death of each pensioner or member of the Fire Department to the undertaker employed by the beneficiary of each pensioner or member, upon the presentation of bills properly identified by beneficiary and upon proper proof of death, and the approval of said bills by the Board of Trustees of the Firemen's Pension Fund. Said funeral expenses shall be paid from the fund known as the Foreign Insurance Pension Fund.'

My understanding is that the money received from the insurance was paid for the express purpose of paying pensions, and the proposed payment of funeral expenses not being pensions, I am inclined to hold that such contemplated payments of funeral expenses would not be legal. As the Toledo Firemen have a separate benefit fund in addition to their pension fund, I am of the opinion that any such payments as are contemplated should properly be paid out of their private firemen's benefit fund.

Query: Would the contemplated action of the firemen's Pension Trustees be legal or permissible?"

In Opinion 1697 rendered to your Bureau on March 29, 1930, a lengthy discussion was had with reference to the policemen's and firemen's pension fund. However, said opinion was based upon the law as it now exists rather than the law under which the examiner states the funds in question were collected. The syllabus of said opinion reads in part:

"1. The trustees of a city firemen's pension fund may legally adopt a rule providing for payment out of the pension fund of hospital expenses, nursing and similar items for injured firemen.

2. Such trustees may legally adopt a rule providing for the payment out of the pension fund of funeral expenses for the deceased members of the fire department who are killed in the performance of duty, or die as a result of injury received in the performance of such duties.

3. Such trustees may legally provide for the payment out of the pension fund of the funeral expenses of deceased members of the department who were not killed in the performance of duty and who did not die as the result of injuries received in the performance of duty, if in the discretion of said board such rule is proper.

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11. The conclusions above stated in branches 1, 2, 3, 4, 5, and 7, are subject to the qualification that in so far as the pension fund is composed of voluntary contributions made under the provisions of Section 4609, such funds may not be used for purposes other than that expressly authorized in said section, which is to increase the pension which may be granted to the contributor or his beneficiaries."

In the body of said opinion it was pointed out that the so-called firemen's pension law contains the word "pension," whereas in the policemen's relief law the words "pension" and "relief" are used. The following is quoted from said opinion:

"While, as hereinbefore indicated, the fund relates to 'relief' in case of a policeman, as contradistinguished from the term 'pension' as used in connection with firemen, yet, as a pension is nothing other than a relief usually gratuitously given, it is believed there is no valid distinction between the two terms."

It is believed that the foregoing would be dispositive of your inquiry were it not for the fact that it is stated that a major portion of the fund in question was collected by virtue of a different law from that which was being considered in my opinion above referred to.

The history of the law relative to firemen's pension funds indicates that Toledo, in so far as the proceeds from the taxes on foreign insurance companies is concerned, was governed by Sections 2477-51, et seq., of the Revised Statutes of Ohio, as found in Bates' Annotated Ohio Statutes, Second Edition. In other words, the sections above mentioned deal with firemen's pension funds in cities of the third grade, first-class. Section 1547, Revised Statutes, of the same edition places the city of Toledo in said class. Section 2477-54, Revised Statutes, provided for the payment to the pension fund of one-half of the taxes paid into the county treasury by insurance companies incorporated by the authority of any other state and doing business in any such city and that the same should constitute a pension fund for the purposes set forth by other sections. Section 2477-58, Revised Statutes, provided for the payment of fines against members of the fire department together with all rewards, fees, gifts, etc., to be paid to the city treasurer and applied by him to the pension fund. Section 2477-60, Revised Statutes, provided that trustees should have power to invest said funds. Section 2477-61, Revised Statutes, provided for the payment of said fund to the beneficiaries. Without undertaking to quote the whole section, it is believed sufficient to state that the said section provided for payment of a pension to any member of the fire department who became permanently disabled and the cause of which disability occurred while in the performance of his duty. The section also provided for death benefits in case a fireman died as the result of injuries incurred in the line of duty.

Under other conditions, the section above mentioned, provided for the payment of partial disability. While, of course, the act under consideration differed considerably in detail with reference to the manner in which the pension was to be paid, it is believed that there is no inhibition against distributing said fund in accordance with the present statutes.

Section 4612, General Code, provides that the trustees shall make rules and regulations for the distribution of the fund, including the qualifications of those to whom any portion of it shall be paid, whereas the former law indicated definitely the manner in which it should be paid. However, it is believed that the legislature has changed the detailed method of distribution from time to time, and it does not necessarily follow that the fund to which you refer may not be distributed in accordance with the present legislative policy with reference to distribution. While, of course, Section 5, of Article XII of the Ohio Constitution provides that no tax shall be levied except in pursuance of law, and states that

every law which imposes a tax shall set forth specifically the object to which it shall be applied, it is not believed that this section will necessarily prevent some deviation with reference to the detailed purpose of the original law. In other words, it is believed that so long as the general purpose with reference to granting relief to firemen is kept in mind, the legislature may from time to time modify the details with reference to the distribution.

In view of the foregoing, it would seem that the same rule of construction adopted in Opinion 1697 has application to the question presented, notwithstanding the present law with reference to the details in connection with its distribution differs in some respect from the law in force at the time the collection of the fund under consideration was made.

In specific answer to your inquiry, it is my opinion that the firemen's pension fund of the City of Toledo, composed, in part, of collections made from the tax on foreign insurance companies, may be used for the purpose of paying funeral expenses of members of the fire department in pursuance of a proper rule to that effect adopted by the board of trustees of the firemen's pension fund.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3242.

CORPORATION—CHANGING NAME BY AMENDMENT OF ARTICLES OF INCORPORATION—PURCHASE OF NEW LICENSE PLATES FOR ITS MOTOR VEHICLES UNNECESSARY.

*SYLLABUS:*

*Where a corporation changes its name by amendment of its articles of incorporation, there is no authority to require the purchase of new license plates for motor vehicles theretofore owned by the corporation and registered under its original name.*

COLUMBUS, OHIO, May 21, 1931.

HON. CHALMERS R. WILSON, *Commissioner of Motor Vehicles, Columbus, Ohio.*

DEAR SIR:—You recently inquired whether it would be necessary for a corporation which changes its name by amendment of its articles of incorporation to secure license plates for its motor vehicles already registered in the name of the corporation before the change was made.

Any corporation may, by appropriate action of its stockholders, change its name by amending its articles of incorporation. Section 8623-14, General Code. It is fundamental that the mere amendment of articles of incorporation does not in any way change the corporate entity. The corporation is the same legal person after as it was before the change.

Examination of the provisions of the motor vehicle license law discloses that it is the purpose of the law that all motor vehicles shall be registered in the name of the owner. Provision is made by section 6294-1 of the Code for the procedure to be followed in the event of the transfer of ownership of a motor vehicle, but