

I am herewith returning to you such certificate of title, warranty deed and other files which you submitted to me.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5736.

APPROVAL—BONDS OF TOLEDO CITY SCHOOL DISTRICT,
LUCAS COUNTY, OHIO, \$5,000.00.

COLUMBUS, OHIO, June 22, 1936.

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

5737.

PAROLE—PERSON SENTENCED UNDER INDETERMINATE
LAW TO SEVERAL CONSECUTIVE SENTENCES—WHEN
ELIGIBLE FOR PAROLE—SENTENCING COURT MAY
NOT MODIFY SENTENCE AFTER TERM FOR PURPOSES
OF CLEMENCY.

SYLLABUS:

1. *Under Section 2166, General Code, a prisoner in the Ohio Penitentiary serving an indeterminate sentence is not entitled as a matter of right to be released on parole after serving the minimum term of his sentence less good time off for good behavior as provided by Section 2210, General Code, since the granting of a parole is discretionary with the Board of Parole as provided in Sections 2211-4, 2211-5 and 2211-6, General Code.*

2. *By virtue of the provisions of Sections 2166, 2166-1, 2169 and 2210, General Code, a person committed to the Ohio Penitentiary on August 25, 1927, to serve one sentence of not less than twenty-four years, eleven months, twenty-nine days, to twenty-five years, a second sentence of not less than four years, eleven months, twenty-nine days, to five years, to commence to run at the expiration of the first sentence, and a third sentence of not less than twenty-four years, eleven months, and twenty-nine days to twenty-five years, to commence to run at the expiration of the second sentence, is not eligible for a hearing for a parole before the Board of Parole until he has served the aggregate of the minimum terms*

of imprisonment fixed by law for his several offenses, less good time off for good behavior as provided in Section 2210, General Code. A prisoner under such sentences is not entitled to be given a hearing by the Board of Parole until 1948. Likewise, a prisoner under such sentences would not be entitled to a final release earlier than on or about August 25, 1948, providing the Board of Parole at such time concludes that the prisoner is entitled to a final release.

3. The Board of Parole has the sole authority to determine whether a prisoner shall be allowed to go out on parole. A prisoner is not entitled to be released on parole as a matter of right since the granting of a parole by the Board of Parole is a discretionary matter.

4. A sentencing court after term for the purpose of clemency does not have the power to modify a sentence imposed upon a person convicted of a crime.

COLUMBUS, OHIO, June 23, 1936.

HON. MARGARET M. ALLMAN, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR MADAM: This will acknowledge receipt of your letter which reads:

"The above named prisoner (J. R.) was received at the Ohio Penitentiary on August 25, 1927, from Cuyahoga County to serve the following sentences as shown by the court records:

1—Indictment No. 33097

Upon a plea of guilty of Robbery—'For a period of not less than 24 years, 11 months, and 29 days, nor more than 25 years.'

2—Indictment No. 33099

Upon a plea of guilty of House Breaking and Larceny—'For a period of not less than 4 years, 11 months, and 29 days, nor more than 5 years. (The sentence in this case to begin at the expiration of the sentence in case No. 33097.)'

3—Indictment No. 33098

Upon a plea of guilty of Robbery—'For a period of not less than 24 years, 11 months, and 29 days, nor more than 25 years. (The sentence in this case to begin at the expiration of the sentence in case No. 33099.)'

We respectfully request your opinion on the questions:

1. When shall this prisoner legally become eligible to a hearing by the Ohio Board of Parole for release on parole?

2. When shall the prisoner become eligible to final release?
3. Has the court authority at this time to modify the sentences as certified to the Penitentiary?"

The prisoner was convicted of several felonies and sentenced to the Ohio Penitentiary at the time the Indeterminate Sentence Law of 1921 was in effect, which law provided that all sentences for felonies except treason and murder in the first degree were to be general or indeterminate sentences with authority in the sentencing court to impose a minimum sentence other than the minimum term of imprisonment fixed by statute for the felony. For legislative history of Section 2166, see *Reeves v. Thomas*, 122 O. S. 22, and *O'Neill v. Thomas*, 123 O. S. 42.

The legislature in 1931 in 114 O. L. 188, restored the statutory minimum for sentences to the Ohio Penitentiary by amending Section 2166, General Code. Section 2166, as amended, reads today identically as it did when enacted in 1913. Section 2166 reads:

"Courts imposing sentences to the Ohio penitentiary for felonies, except treason, and murder in the first degree, shall make them general and not fixed or limited in their duration. All terms of imprisonment of persons in the Ohio Penitentiary may be terminated in the manner and by the authority provided by law, but no such terms shall exceed the maximum term provided by law for the felony of which the prisoner was convicted, nor be less than the minimum term provided by law for such felony. If a prisoner is sentenced for two or more separate felonies, his term of imprisonment may equal, but shall not exceed, the aggregate of the maximum terms of all the felonies for which he was sentenced and, for the purposes of this chapter, he shall be held to be serving one continuous term of imprisonment. If, through over-sight or otherwise, a sentence to the Ohio penitentiary should be for a definite term, it shall not thereby become void, but the person so sentenced shall be subject to the liabilities of this chapter and receive the benefits thereof, as if he had been sentenced in the manner required by this section. As used in this section the phrase 'term of imprisonment' means the duration of the state's legal custody and control over a person sentenced as provided in this section."

Incidentally, when the legislature amended Section 2166 in 1931, it also repealed Section 13451-19, General Code, enacted in 113 O. L. 201, which section authorized courts to fix the minimum term of imprisonment of indeterminate sentences in the same manner as provided in Sec-

tion 2166 after its amendment in 1921 and prior to its amendment in 1931.

The legislature in 1931 also enacted Section 2210 (114 O. L. 530) and the so-called Board of Parole Law, Sections 2211 to 2211-9, General Code (114 O. L. 590), which created a Board of Parole charged with the duty of determining when inmates in the various penal institutions of the state were to be permitted to leave the confines of such institutions on parole. The Board of Parole was and is vested with the authority granted to the Board of Clemency by the legislature in 1917 in 107 O. L. 598 (Sections 86 to 92-3, inclusive, General Code). That law abolished the Board of Pardons and transferred to the Board of Clemency all the powers and duties of the Board of Pardons and all the powers and duties of the Board of Administration of Ohio with relation to the release, parole and probation of persons confined in or under sentence to the penal or reformatory institutions of this state. The power formerly reposed by the legislature in the Board of Pardons, the Board of Administration of Ohio and the Ohio Board of Clemency to grant parole to persons in the Ohio Penitentiary has been transferred by the legislature to the Board of Parole, subject to the same or similar restrictions as previously imposed upon the Board of Clemency except with respect to the provisions contained in Section 2171, General Code, repealed in 114 O. L., which section provided that a prisoner serving an indeterminate sentence in the Ohio Penitentiary although eligible for parole could not be considered for parole unless recommended as worthy of such consideration by the warden or chaplain of the penitentiary. Under the present law, the Board of Parole can consider the matter of paroling a prisoner without that recommendation. The issuance of a parole either under the law as it existed prior to 1931 or under the Board of Parole Law was and is a matter in the sound discretion of the Ohio Board of Clemency or the Board of Parole with the limitations prescribed by the legislature. The Board of Parole Law, as enacted in 1931, provides that paroles may be granted only to those prisoners who have become legally eligible for parole as provided by law and it is the duty of the superintendent of a penal or reformatory institution to notify the Board of Parole when a prisoner in his institution becomes legally eligible for parole.

Section 2166, General Code, reads:

“Courts imposing sentences to the Ohio penitentiary for felonies, except treason, and murder in the first degree, shall make them general and not fixed or limited in their duration. All terms of imprisonment of persons in the Ohio penitentiary may be terminated in the manner and by the authority pro-

vided by law, but no such terms shall exceed the maximum term provided by law for the felony of which the prisoner was convicted, nor be less than the minimum term provided by law for such felony. If a prisoner is sentenced for two or more separate felonies, his term of imprisonment may equal, but shall not exceed, the aggregate of the maximum terms of all the felonies for which he was sentenced and, for the purposes of this chapter, he shall be held to be serving one continuous term of imprisonment. If through over-sight or otherwise, a sentence to the Ohio penitentiary should be for a definite term, it shall not thereby become void, but the person so sentenced shall be subject to the liabilities of this chapter and receive the benefits thereof, as if he had been sentenced in the manner required by this section. As used in this section the phrase 'term of imprisonment' means the duration of the state's legal custody and control over a person sentenced as provided in this section."

Section 2169, General Code, provides:

"The Ohio Board of Administration shall establish rules and regulations by which a prisoner under sentence other than for treason or murder in the first or second degree, having served a minimum term provided by law for the crime for which he was convicted or a prisoner under sentence for murder in the second degree, having served under such sentence ten full years, may be allowed to go upon parole outside the building and inclosure of the penitentiary. Full power to enforce such rules and regulations is hereby conferred upon the board, but the concurrence of every member shall be necessary for the parole of a prisoner. The board may designate geographical limits within and without the state, to which a paroled prisoner may be confined or may at any time enlarge or reduce such limits, by unanimous vote."

Section 2210, General Code, reads:

"A person confined in a state penal institution and not eligible to parole before the expiration of a minimum sentence or term of imprisonment, or hereafter sentenced thereto under a general sentence, who has faithfully observed the rules of said institution, shall be entitled to the following diminution of his minimum sentence:

(a) A prisoner sentenced for a minimum term of one year shall be allowed a deduction of five days from each of the twelve months of his minimum sentence.

(b) A prisoner sentenced for a minimum term of two years shall be allowed a deduction of six days from each of the twenty-four months of his minimum sentence.

(c) A prisoner sentenced for a minimum term of three years shall be allowed a deduction of eight days from each of the thirty-six months of his minimum sentence.

(d) A prisoner sentenced for a minimum term of four years shall be allowed a deduction of nine days for each of the forty-eight months of his minimum sentence.

(e) A prisoner sentenced for a minimum term of five years shall be allowed a deduction of ten days from each of the sixty months of his minimum sentence.

(f) A prisoner sentenced for a minimum term of six or more years, shall be allowed a deduction of eleven days from each of the months of his minimum sentence.

(g) A prisoner sentenced for a minimum of a number of months or fraction of years shall be allowed the same time per month as is provided for the year next higher than such minimum sentence.

At the expiration of the minimum sentence diminished as herein provided, each prisoner shall be eligible for parole as provided by law."

Section 2211-5, General Code, provides :

"The board of parole shall have the power to exercise its functions and duties in relation to parole, release, pardon, commutation, or reprieve upon its own initiative or the initiative of the superintendent of a penal or reformatory institution. When a prisoner becomes legally eligible for parole the superintendent of the institution in which he is confined shall notify the board of parole in such manner as may be prescribed by the board. The board shall have the continuous power to investigate and examine or to cause the investigation and examination of persons confined in the penal or reformatory institutions of Ohio, both concerning their conduct therein, the development of their mental and moral qualities and characteristics, and their individual and social careers, and the board's action shall take into account the results of such investigation and examination. But the board shall not order or recommend the release of any person from actual confinement unless in its judgment there is a reasonable ground to believe that, if so released, he will be and remain at liberty without violating the law, and that such release is not incompatible with the welfare of society. It shall be the duty of

all state and local officials to furnish information to the board of parole when requested to do so and to cooperate with the said board in the performance of its duties.”

Section 2211-6, General Code, reads:

“Subject to the limitations imposed by law, the board of parole shall have full, continuous and exclusive power to determine the time when, the period for which and the terms and conditions in accordance with which any prisoner now or hereafter confined in a penal or reformatory institution may be allowed to go upon parole outside the premises of the institution to which he has been committed, assigned or transferred. All prisoners on parole shall remain in the legal custody of the department of public welfare. The concurrence of at least three members of the board at a meeting of the board shall be necessary for the parole or release of a prisoner. When a paroled prisoner shall have performed all the terms and conditions of his parole the board may finally release him.”

The provisions of Sections 2166, 2169, 2210, 2211-5 and 2211-6, General Code, being in *pari materia*, the same must be construed so as to give effect to all of those sections. Under Section 2211-6, General Code, the Board of Parole has authority to determine “when, the period for which and the terms and conditions in accordance with which any prisoner now or hereafter confined in a penal or reformatory institution may be allowed to go upon parole.” The broad powers conferred upon the Board of Parole in Sections 2211-5 and 2211-6, General Code, are, however, subject to the limitations enacted by the legislature in Section 2169. The provisions of Section 2169, General Code, limit the Board of Parole in granting paroles only to prisoners in the Ohio Penitentiary other than those serving sentences for murder in the first and second degree who have served the minimum term of imprisonment provided by law for the offense. In other words, under Section 2169, General Code, a prisoner serving an indeterminate sentence in the Ohio Penitentiary is not eligible for parole until he has served the minimum term of imprisonment fixed by law for the felony. The limitation imposed upon the Board of Parole by Section 2169, General Code, with respect to the minimum term of imprisonment which must be served by a person before he may be considered for parole is somewhat lessened by the provisions of Section 2210, General Code. Under Section 2210, General Code, the time when the prisoner may become eligible for parole is hastened or accelerated. The provisions for diminution of sentence for good behavior contained in Section 2210, General Code, apply only to the minimum terms of

imprisonment of indeterminate sentences, since the diminution of sentence clause contained in Section 2210 expressly provides that "at the expiration of the minimum sentence diminished as herein provided, each prisoner shall be eligible for parole as provided by law."

In the case of *Ex Parte Tischler*, 127 O. S., 404, it was held in the first paragraph of the syllabus as follows:

"Under Section 2210, General Code, credits allowed for good behavior reduce the time within which a prisoner is eligible for parole, and are not to be deducted from the minimum sentence so as to reduce the term of imprisonment."

Section 2210, General Code, expressly provides that credit for good behavior shall be allowed to prisoners now or hereafter serving general sentences and that the credit so earned shall be deducted from the minimum term of imprisonment. The expression "general sentence" is synonymous with the expression "indeterminate sentence." See *Reeves v. Thomas*, and *O'Neill v. Thomas*, *supra*.

The effect of Section 2210, General Code, is to diminish the minimum term of imprisonment so that "at the expiration of the minimum sentence diminished as herein provided, each prisoner shall be eligible for parole as provided by law." Thus, a prisoner serving an indeterminate sentence in the Ohio Penitentiary on the expiration of his minimum term of imprisonment, less good time off for good behavior, as provided in Section 2210, General Code, merely becomes eligible for parole at that time.

The mere fact that a prisoner may become legally eligible for parole does not necessarily mean that he will be allowed to go out on parole by the Board of Parole since the board may or may not determine the prisoner worthy of such a privilege. See Sections 2211-4, 2211-5 and 2211-6, General Code. The phrase "eligible for parole" used by the legislature in the Board of Parole Law and Section 2210, General Code, means that the Board of Parole may consider whether a prisoner should or should not be allowed to go out on parole. See Section 2211-5, General Code. There is no statutory requirement which compels the Board of Parole when a prisoner becomes eligible for parole to immediately take under consideration the question of granting a parole or to grant him a parole. A prisoner serving an indeterminate sentence, at the end of his minimum term of imprisonment as diminished by the provisions of Section 2210, General Code, has only the right to request the Board of Parole that he be released on parole from actual incarceration, but he has no absolute right to such parole.

It will be observed that under Section 2169, General Code, a prisoner who is serving an indeterminate sentence in the Ohio Penitentiary is

not legally eligible for parole until he has served the minimum term of imprisonment fixed by law for the felony for which he was convicted. This minimum term of imprisonment may be further reduced or diminished by the credits allowed by Section 2210, General Code. The diminution of the minimum term of imprisonment allowed by Section 2210, General Code, causes a prisoner to become eligible for parole before the actual expiration of the minimum term of imprisonment for the felony of which the prisoner was convicted.

By virtue of Section 2166, General Code, a prisoner cannot be imprisoned beyond the maximum term of imprisonment fixed for the offense but there is no provision in the General Code that a prisoner serving an indeterminate sentence in the Ohio Penitentiary be released before the prisoner's actual maximum term of imprisonment has expired. Under an indeterminate sentence a prisoner is committed to serve a definite maximum term of imprisonment which must be served either constructively, as on parole (Sections 2211-6 and 2211-9, G. C., and 46 C. J., 1208), or actually. It is a well established rule of law that a prisoner serving an indeterminate sentence has no right to demand that he be discharged or released from actual confinement before the expiration of the actual term of imprisonment inasmuch as an indeterminate sentence is a certain and definite sentence for the maximum term provided by law for the offense and that such a sentence does not end when the minimum term has been served. See *People v. Connors*, 126 N. E., 595 (Ill.); *People v. Joyce*, 246 Ill., 124; *Ex Parte Bellis*, 241 Pac., 910 (Calif.); *People v. Snow*, 10 Pac. (2d), 567; and 29 C. J., 57.

In the case of *Adams v. Russell*, 135 N. E., 658, 659 (Mich.), it was held that a prisoner serving an indeterminate sentence was not entitled as a matter of right to a parole on the expiration of the minimum term of imprisonment.

To the same effect is the case of *Ex Parte Tischler*, supra, where the Supreme Court held in the second paragraph of the syllabus as follows:

“A prisoner confined in the Ohio penitentiary is not entitled to a parole as a matter of right upon the expiration of his minimum term of imprisonment.”

See also *State, ex rel. Attorney General v. Peters*, 43 O. S., 629, 644.

Whether a prisoner serving an indeterminate sentence in the Ohio Penitentiary will be actually imprisoned to the end of his maximum term is governed by the provisions of Sections 2211-5 and 2211-6, General Code, especially that part of Section 2211-5 which provides that:

“But the board shall not order or recommend the release of any person from actual confinement unless in its judgment there is a reasonable ground to believe that, if so released, he will be and remain at liberty without violating the law, and that such release is not incompatible with the welfare of society.”

In other words, the Board of Parole may parole a prisoner before his maximum term of imprisonment is reached, depending, however, upon the prisoner being able to come within the provisions of Sections 2169 and 2211-5, General Code. Sections 2211, et seq., General Code, place in the Board of Parole the power to determine when, if at all, a prisoner serving an indeterminate sentence is entitled to go out on parole subject to the provisions contained in Section 2169, General Code, that he shall serve the minimum term of imprisonment provided by law for the offense, less good time off for good behavior as provided in Section 2210, General Code.

The issuance of a parole is made to depend upon the judgment and sound discretion of the Board of Parole within the limitations set forth in Sections 2169, 2210, 2211-5 and 2211-6, General Code. In view of this discretionary power a prisoner serving an indeterminate sentence in the Ohio Penitentiary cannot complain that he is compelled to serve his maximum term of imprisonment if the Board of Parole concludes that he should not be granted a respite of his actual confinement by paroling him. Thus the Board of Parole is the only authority in Ohio outside of the Governor which can relieve a prisoner of his actual imprisonment whenever in its judgment it determines that the conduct and character of the prisoner warrants that he should be released or paroled and that such parole will not be incompatible with the well being and welfare of society.

In the Opinions of the Attorney General for 1931, Vol. II, page 1152, it was held 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.”

Section 2166-1, General Code, reads:

“The power granted by section 2166, General Code, as amended in this act, to terminate terms of imprisonment shall apply to any prisoner who shall have served the minimum term provided by law for the felony of which he was convicted, not-

withstanding the fixing by the court of a larger minimum period under the authority of the act passed March 15, 1921, entitled 'To amend section 2166 of the General Code relative to indeterminate sentences to the Ohio Penitentiary', or under authority of section 13451-19 of the General Code and shall apply to any person hereafter sentenced, notwithstanding that the felony may have been committed previous to the enactment of said laws."

The minimum terms of imprisonment fixed by the trial court in the three cases exceeded the statutory minimum terms of imprisonment fixed by Sections 12432 and 12442, General Code. By the provisions of Section 2166-1, General Code, the minimum terms of sentence fixed in the several felonies are superseded by the minimum terms of imprisonment fixed by the legislature for the crime of robbery, to wit, ten years, and for the crime of housebreaking in the day time, to wit, one year. Thus, the prisoner under Sections 2166 and 2166-1, General Code, must be considered as serving two separate sentences of ten to twenty-five years and a third sentence of one to five years.

A question similar to the one raised by the two robbery sentences imposed upon J. R. was passed upon in the Opinions of the Attorney General for 1933, Vol. I, page 111, wherein it was held in the third paragraph of the syllabus as follows:

"Where a trial judge, as authorized by section 2166 prior to its repeal and re-enactment in 1931, sentenced a person to serve a minimum term of imprisonment equal to the maximum term of imprisonment fixed by law for the offense of robbery, to wit, twenty-five years, such sentence, by virtue of the provisions of section 2166-1, becomes an indefinite sentence of ten to twenty-five years and the prisoner is entitled to the benefits of sections 2210, 2166 and 2169."

This office has repeatedly held that where several sentences are imposed for separate and distinct offenses the sentences run consecutively unless a contrary intention is expressed by the sentencing court. Opinions of Attorney General for 1932, pages 919 and 1208; Opinions of Attorney General for 1933, page 69. See also *Anderson v. Brown*, 117 O. S., 393.

This office has held that where one is convicted of two or more separate felonies which are to be served cumulatively, the prisoner shall be held to be serving one continuous term for the purpose of parole. In Opinions of the Attorney General for 1933, page 69, it was held:

"A person serving several indeterminate sentences consecutively in the Ohio Penitentiary is deemed to be serving one con-

tinuous term for the purposes of parole. Such a person is eligible for parole on the expiration of the aggregate of the minimum terms of his several sentences, less good time off for good behavior as provided by section 2210, General Code. A prisoner who is serving successive or cumulative sentences is also eligible for parole, as provided by section 2210-1, General Code, providing the aggregate of the minimum terms of his several sentences is longer than fifteen years."

Thus, the prisoner in the instant case under his several sentences must be considered for the purpose of parole to be serving a continuous sentence of twenty-one to fifty-five years. Under Section 2210, General Code, the prisoner would be entitled to a credit of approximately seven years and four months for good behavior which would make the prisoner eligible for parole at the end of thirteen years and eight months. If the conduct of the prisoner was such that he should not be given credit for good behavior as provided in Section 2210, General Code, he would be eligible for parole at the end of fifteen years as provided in Section 2210-1, General Code. The prisoner having served approximately eight years and ten months he will not be eligible for parole until some time in 1941.

In an opinion rendered by this office in Opinions of the Attorney General for 1933, page 111, it was held that the Board of Parole cannot grant a final release to a prisoner until the prisoner has served by actual or constructive imprisonment at least the minimum term provided by law for the felony of which the prisoner was convicted. Thus, the prisoner if paroled will not be eligible for a final release under his several consecutive sentences until he has served either in prison or out on parole at least twenty-one years.

The case of *Municipal Court of Toledo, et al. v. State, ex rel. Platter*, 126 O. S., 103, is dispositive of the third question raised in your inquiry. The Supreme Court of Ohio in that case held:

"1. Criminal procedure in this state is regulated entirely by statute, and the state has thus created its system of criminal law covering questions of crime and penalties, and has provided its own definitions and procedure.

2. By statute, authority is conferred upon trial judges to suspend imposition of sentence and place the defendant upon probation; also discretionary power is conferred upon trial judges to suspend execution of sentence of one convicted of a bailable offense for such period as will give the accused time to prepare, file or apply for leave to file a petition for review of such con-

viction. Also provision is made for conditional sentence in misdemeanors.

3. The trial courts of this state do not have the inherent power to suspend execution of a sentence in a criminal case and may order such suspension only as authorized by statute."

The principle of law announced in that case, that a sentencing court does not have the inherent power to suspend the execution of a sentence for the purpose of clemency, applies likewise where a sentencing court seeks to modify a sentence once it is imposed for the purpose of clemency. There is no provision in the Code of Criminal Procedure of this state which authorizes a sentencing court for the purpose of clemency to modify after term of court a sentence previously imposed upon a person convicted of a criminal charge.

The rule with reference to modification of sentence is stated as follows in 12 O. Jur., 713 and 714:

"The discretionary power of the trial court, *at the term* at which judgment and sentence are entered, to revise its judgments, is well established. Such power is necessary for the protection of the defendant, as well as the public, and may be exercised as well in his favor as against him, when the court has been misled by mistake or fraud. The proper and regular method to invoke this power is by motion addressed to the court. The suggestion in the Lee Case that revision had to be made before sentence had gone into execution, was approved by the Cuyahoga Circuit Court in a case where the prosecution sought to increase the punishment, but that court has also held proper a ruling remitting the fine imposed by a sentence imposing both fine and imprisonment, after imprisonment had begun. *But after the term at which judgment was entered the Court of Common Pleas has no power or authority to modify its judgment except in such manner as is pointed out by statute.*" (Italics ours.)

Concluding, it is my opinion that:

1. Under Section 2166, General Code, a prisoner in the Ohio Penitentiary serving an indeterminate sentence is not entitled as a matter of right to be released on parole after serving the minimum term of his sentence less good time off for good behavior as provided by Section 2210, General Code, since the granting of a parole is discretionary with the Board of Parole as provided in Sections 2211-4, 2211-5 and 2211-6, General Code.

2. By virtue of the provisions of Section 2166, 2166-1, 2169 and 2210, General Code, a person committed to the Ohio Penitentiary on August 25, 1927, to serve one sentence of not less than twenty-four years, eleven months, twenty-nine days, to twenty-five years, a second sentence of not less than four years, eleven months, twenty-nine days, to five years, to commence to run at the expiration of the first sentence, and a third sentence of not less than twenty-four years, eleven months, and twenty-nine days to twenty-five years, to commence to run at the expiration of the second sentence, is not eligible for a hearing for a parole before the Board of Parole until he has served the aggregate of the minimum terms of imprisonment fixed by law for his several offenses, less good time off for good behavior as provided in Section 2210, General Code. A prisoner under such sentences is not entitled to be given a hearing by the Board of Parole until 1948. Likewise, a prisoner under such sentences would not be entitled to a final release earlier than on or about August 25, 1948, providing the Board of Parole at such time concludes that the prisoner is entitled to a final release.

3. The Board of Parole has the sole authority to determine whether a prisoner shall be allowed to go out on parole. A prisoner is not entitled to be released on parole as a matter of right since the granting of a parole by the Board of Parole is a discretionary matter.

4. A sentencing court after term for the purpose of clemency does not have the power to modify a sentence imposed upon a person convicted of a crime.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5738.

APPROVAL—BONDS OF VILLAGE OF FAIRVIEW, CUYA-
HOGA COUNTY, OHIO, \$74,450.00.

COLUMBUS, OHIO, June 23, 1936.

Industrial Commission of Ohio, Columbus, Ohio.