

were sold, offered or exposed for sale for seeding purposes in Ohio, even though such seeds are ultimately sold to another dealer.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

---

1544.

LEGISLATURE—ENACTMENT—WHERE WORDS ARE: “ALL ACTS OR PARTS OF ACTS IN CONFLICT WITH AND INCONSISTENT TO ANY OF THE PROVISIONS” OF ACT ARE REPEALED—REPEAL IS BY EXPRESS ENACTMENT, NOT BY IMPLICATION—PARDON AND PAROLE COMMISSION HAS FULL, COMPLETE AND EXCLUSIVE JURISDICTION OVER PAROLE OF JUVENILE PRISONERS IN OHIO STATE REFORMATORY, COMMITTED THERE BY JUVENILE COURTS—APPLICATION OF SUCH PART OF SECTION 2131-1 G. C. REPEALED BY PARDON AND PAROLE CODE OF OHIO, SECTIONS 2209 TO 2209-23 G. C.

*SYLLABUS:*

1. *Where the Legislature provides in an act that “all acts or parts of acts in conflict with and inconsistent to any of the provisions” of such act are hereby repealed, such repeal is a repeal by express enactment and not a repeal by implication.*

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and committed to such institution by the juvenile courts, and to the supervision and recommitment of such parolees, was repealed by the Pardon and Parole Code of Ohio (Sections 2209 to 2209-23, General Code), and the Pardon and Parole Commission has full, complete and exclusive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.*

COLUMBUS, OHIO, December 8, 1939.

HON. CHARLES L. SHERWOOD, *Director, Department of Public Welfare, Columbus, Ohio.*

DEAR SIR: Your communication, requesting my opinion as to the paroling authority over juveniles in the Ohio State Reformatory, reads as follows:

“Opinion 4865, November 5, 1935, to the effect that juvenile delinquency cases in the Ohio State Reformatory continue under the jurisdiction of the committing juvenile courts and therefore that releases on parole on or before twenty-one years of age are

in the hands of the court, was based on Section 1643, G. C. According to an opinion dated September 2, 1937, the repeal of Section 1643 and the enactment of Section 1639-35 places authority (since August 19, 1937) with the Board of Parole.

Section 2131-1, G. C., effective May 17, 1938—

'A male child over sixteen years of age committed by a juvenile court as provided by law shall also be received by the superintendent. 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. \* \* \*

Such children may be conditionally released upon leaves of absence until finally discharged under rules and regulations established by the department of public welfare. No such leave of absence shall be granted to any such child except upon the written recommendation of the superintendent and upon the reasonable belief that the release of such child is not incompatible with the welfare of society.'

There appears to be a question as to the paroling authority and supervisory authority while on parole—the Pardon and Parole Commission and the Division of Probation and Parole, or the Director of the Department of Public Welfare. Will you please advise us."

It is unnecessary again to quote Section 2131-1 of the General Code, which you quote in part and which, as you state, became effective on May 17, 1938 (117 v. 806). This section specifically places the sole authority over male children over sixteen years of age, committed to a reformatory, in the reformatory and further provides that such children may be conditionally released on "leaves of absence" upon the written recommendation of the superintendent under rules and regulations established by the Department of Public Welfare.

In Amended Substitute Senate Bill No. 82, passed by the 93rd General Assembly as an emergency measure and effective on May 3, 1939, the Pardon and Parole Commission of Ohio was created and established. The act was entitled:

"AN ACT—To enact a code of pardon and parole; to create and establish a pardon and parole commission and provide for the appointment and employment of the necessary officers and employees of such commission; to fix and provide for the compensation of the members, officers and employees of such commission; to provide for the investigation of cases requiring the exercise of executive clemency and recommendations to the governor in such cases and for the parole of persons confined in state penal and reformatory institutions, the supervision of such persons and

the extension of aid thereto; to abolish the board of parole; to amend sections 154-6, 154-57, 1554-3, 1554-6, 2210-1, 12399, 13031-17 and 13438-11, and to repeal sections 92-4, 92-5, 92-6, 98, 99, 100, 106, 107, 108, 2169 and 2211 to 2211-9, inclusive, of the General Code; and to declare an emergency."

You will observe from the above, and an examination of the repealing clause (Section 27 of the act) reveals, that Section 2131-1, General Code, referred to in your letter, was not expressly repealed by numerical designation.

Except where the Legislature itself gave Code numbers to certain sections of the act, the act, designated in Section 1 thereof as the "Pardon and Parole Code of Ohio", was codified as Sections 2209 to 2209-23, General Code.

The sections of the new act necessary to be considered in a resolution of your question are Sections 2209, 2209-8, 2209-19, 2209-23, General Code, and Section 27 of the act. These sections read in part as follows (the emphasis being supplied):

*Sec. 2209:*

"\* \* \*

The word 'parole' shall mean the release from confinement in any state penal or reformatory institution, by the pardon and parole commission upon such terms and conditions as the commission may prescribe. A prisoner on parole shall remain and be in the legal custody of the department of public welfare, and under the control of the commission.

\* \* \*

A 'convict' is a person who has been convicted of a felony under the laws of this state, whether or not actually confined in a state penal or reformatory institution, unless he shall have been pardoned or shall have served his sentence, and a 'prisoner' is a person who is in actual confinement in such an institution."

*Sec. 2209-8:*

"The commission shall have the power and authority to 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.* When a prisoner shall have become legally eligible for parole the head of the institution in which such prisoner is confined shall notify the commission in such manner as may be prescribed by the commis-

sion. The commission shall have continuing power and authority to investigate and examine, or to cause the investigation and examination of, *prisoners confined in state penal or reformatory institutions* concerning their conduct therein, their mental and moral qualities and characteristics, their knowledge of a trade or profession, their former means of livelihood, their family relationships, and any other matters affecting their fitness to be at liberty without being a threat to society.

The commission may recommend the pardon or commutation of sentence of any convict or prisoner, *or order the parole of any prisoner*, if in its judgment there is reasonable ground to believe that, if the convict be granted a pardon or commutation, *or the prisoner be paroled*, he will be and remain at liberty without violating the law, and that the granting of such pardon, commutation or parole is consistent with the welfare and security of society.

\* \* \*"

*Sec. 2209-19:*

"Persons conditionally pardoned or paroled shall be supervised by the commission and by the proper state parole and field officers and the purpose of such supervision shall be to require them to comply with the terms and conditions of their pardon or parole and to assist them to become law-abiding members of society."

*Sec. 2209-23:*

"All powers and duties vested in or imposed by law upon any other officers, boards or commissions, excepting the governor in matters of executive clemency under the constitution with respect to the recommendation of pardon, commutation, or reprieve of any convict or prisoner, or to the parole of any prisoner, or the reimprisonment or recommitment to the institution of any person confined in or under sentence to any state penal or reformatory institution, are hereby transferred to, vested in and imposed upon the commission and shall be exercised in accordance with law and this act. Upon the appointment of the members of the commission and their qualification, said commission shall be and become the successor of and shall supersede any and all other boards, commissions and officers, excepting the governor, with respect to such powers and duties. \* \* \*"

*Sec. 27 (Am. Sub. S. B. No. 82) :*

"That existing sections 154-6, 154-57, 1554-3, 1554-6, 2210-1, 12399, 13031-17 and 13438-11 and sections 92-4, 92-5,

92-6, 98, 99, 100, 106, 107, 108, 2169, and 2211 to 2211-9 inclusive, of the General Code, and all acts or parts of acts in conflict with and inconsistent to any of the provisions of this act are hereby repealed."

You will note that by the terms of Section 2209, *supra*, the term "parole" means release from confinement, that is, release from *actual* confinement, "in any state penal or *reformatory* institution", while the same section defines a "prisoner" as a person "who is in actual confinement" in a state penal or reformatory institution. Section 2209-8, in broad terms, authorizes the Pardon and Parole Commission to exercise its functions and duties in relation to the parole of prisoners eligible for parole, upon either the initiative of the head of the institution wherein the prisoner is confined or upon its own initiative, and by the express terms of Section 2209-23, *supra*, all "powers and duties vested in or imposed by law upon any other officers, \* \* \* excepting the governor in matters of executive clemency under the constitution, with respect \* \* \* to the parole of any prisoner" or his recommitment, is transferred to and vested in the commission. Under the provisions of Section 2209-19, General Code, prisoners on parole are required to be supervised by the Commission and the proper state parole and field officers. It is manifest from the decisive character of the language of these sections, as well as from the title of the act, that it was the intention of the Legislature to repose in the Pardon and Parole Commission full, complete and exclusive power and authority with reference to the parole of any and all prisoners confined in the Ohio State Reformatory, including male children over sixteen years of age committed thereto by juvenile courts, and the supervision and recommitment of such parolees, until the time of their final discharge.

But if there were any doubt as to this conclusion, such doubt is dispelled by the very positive direction of the Legislature, contained in Section 27 of the act, that "all acts or parts of acts *in conflict with and inconsistent to any* of the provisions of" the act under consideration, are hereby repealed. As held in *State ex rel. Finegold v. Commissioners of Lorain County*, 29 Oh. App. 1928 (C. of A. Lorain Co., 364):

"When a lawmaking body declares in plain language that a new law shall supersede other laws then in force and inconsistent therewith, it in effect repeals such other laws—not by implication, but by express enactment."

At page 371 of the opinion, Judge Pardee, speaking for the Court, said as follows:

"When the Legislature declared in plain language that the procedure set forth in the Kreuger Law should supersede the

procedure inconsistent therewith provided by other laws for the issuance of bonds, it in effect repealed such other laws, not by implication, but by express enactment; and hence the question of whether the law under which the commissioners acted was repealed by implication is not presented for determination.

'Yet, where a statute contemplates in express terms that its enactments will repeal earlier acts, by their inconsistency with them, the chief argument or objection against repeal by implication is removed, and the earlier acts may be made readily treated as repealed.' Endlich on the Interpretation of Statutes, Section 206, p. 275.

See, also, 1 Lewis' Sutherland, Statutory Construction (2d Ed.), pp. 458, 459, Section 246."

Applying the above rule in the instant case, it is obvious that there was an express repeal of that part of Section 2131-1, supra, relating to the parole of juvenile prisoners confined in the Ohio State Reformatory. A conditional release upon a leave of absence until final discharge is a parole as that word is defined in Section 2209, above quoted in part, and since there is a clear inconsistency in that part of Section 2131-1, relating to the parole of juvenile prisoners committed to the Reformatory and the provisions of the Pardon and Parole Code as to who shall parole, and supervise while upon parole and recommit, prisoners of the type described in your letter, that part of Section 2131-1 must fall.

Moreover, it seems to me that even though there were no express repeal of Section 2131-1, General Code, in the respect referred to, I would be required to hold that there was a repeal by implication. In Lewis' Sutherland on Statutory Construction, Vol. I, p. 521, it is said as follows:

"\* \* \* So where there are two statutes on the same subject passed at different dates and it is plain from the framework and substance of the last that it was intended to cover the whole subject and to be a complete and perfect system or provision in itself, the last must be held to be a legislative declaration that whatever is embraced in it shall prevail and whatever is excluded is discarded and repealed. \* \* \*"

In the case of *State of Ohio vs. Hollenbacher*, 101 O. S., 478 (1920), it was said at page 483:

"The rule is familiar, and everywhere recognized, that a subsequent statute revising the whole subject-matter of the former act, and evidently intended as a substitute for it, although it contains no express words to that effect, operates to repeal

the former. But it is equally well settled that repeals by implication are not favored, and, where two affirmative statutes exist, one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation. The fact that a later act is different from a former one is not sufficient to effect a repeal. It must further appear that the later act is contrary to or inconsistent with the former. The question is one of legislative intent. It must clearly appear that the legislature intended not only to enact a new law but to enact it in place of the old one."

In view of the foregoing and for the reasons given, it is my opinion that that part of Section 2131-1, General Code, relating to the parole of juvenile prisoners from the Ohio State Reformatory and the supervision and recommitment of such parolees, was repealed by the Pardon and Parole Code (Sections 2209 and 2209-23, inclusive, General Code), and that the Pardon and Parole Commission has full, complete and exclusive jurisdiction over the parole of all prisoners confined in the Ohio State Reformatory, and the supervision and recommitment of such parolees, including those committed by the juvenile court.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

---

1545.

TOWNSHIP HIGHWAY—NO AUTHORITY IN BOARDS OF TOWNSHIP TRUSTEES TO CONSTRUCT OR RESURFACE BY FORCE ACCOUNT—NO AUTHORITY TO PURCHASE HIGHWAY MATERIALS AT A COST IN EXCESS OF \$500.00 WITHOUT COMPETITIVE BIDDING.

**SYLLABUS:**

1. *Boards of township trustees are granted no authority to construct or resurface a township highway by force account. Section 3373, General Code, grants authority only to repair or maintain a township highway as therein prescribed.*

2. *A board of township trustees has no authority to make a purchase of highway materials at a cost in excess of \$500.00, without competitive bidding.*