

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the National Surety Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
C. C. CRABBE,
Attorney General.

3168.

PRISONER IN PENITENTIARY NOT ELIGIBLE TO PAROLE UNLESS
RECOMMENDED BY WARDEN AND CHAPLAIN.

SYLLABUS:

Before an application for parole of a prisoner confined in the penitentiary may be considered, such prisoner must be recommended as worthy of such consideration by the warden and chaplain, and notices of such recommendation shall be published as required by section 2171 of the General Code.

Form of notice discussed.

COLUMBUS, OHIO, March 3, 1926.

Ohio Board of Clemency, Columbus, Ohio.

GENTLEMEN:—In your recent communication you request my opinion on the following:

“Section 2171 of the General Code of Ohio reads as follows, the under-scoring of certain words of the section being ours, and for the purpose of inviting especially to your attention certain portions of the statute:

‘A prisoner confined in the penitentiary shall not be eligible to parole, and an application for parole shall not be considered by the board of managers, until such prisoner is recommended as worthy of such consideration by the warden and chaplain of the penitentiary. Before consideration by such board, notice of such recommendation shall be published for three consecutive weeks in two newspapers of opposite politics in the county from which such prisoner was sentenced. The expense of such publication shall not exceed one dollar for each paper.’

The following form of parole notice, for publication as required by law, was recently adopted by the managing officers of the Ohio penitentiary:

'Application for Parole.

Notice is hereby given that John Doe a prisoner now confined in the Ohio penitentiary, has been recommended to the Ohio Board of Clemency, by the warden and chaplain as legally eligible to a hearing for parole. Said application will be for hearing on or after _____. *This notice is recommendation for hearing only.*

D. J. Bonzo, Parole and Record Clerk.'

In view of the words of negation found in the last sentence of the notice, we beg to ask if such notice is a substantial compliance with the statute? And we inquire further, in view of the language of the statute above mentioned, if this board has a right to grant a parole to an Ohio penitentiary prisoner in the absence of any affirmative recommendation of such action by the warden and chaplain of the institution, all other conditions having been complied with?"

From a reading of the section which you quote, it is clear that an application for parole shall not be considered by your board unless the prisoner under consideration is recommended as worthy of such consideration by the warden and chaplain of the penitentiary.

It further is clear that no such consideration shall be made until a notice of the recommendation of the warden and chaplain is published as required by law in the county from which such prisoner was sentenced. A form of notice to make an absolute compliance with the statute should indicate that a prisoner is recommended as worthy of parole by the warden and the chaplain.

The notice which you quote states in substance that the prisoner has been recommended by the warden and chaplain "as legally eligible to a hearing for parole." While the words last quoted are not the same as mentioned by the statute, undoubtedly it is a substantial compliance with the provision of the statute. The additional words "This notice is recommendation for hearing only" would seem to have no legal significance, such language being surplusage.

It is therefore the opinion of this department that such notice is a substantial compliance with the statute, even though it is in bad form. It is my judgment that this notice in effect proclaims the information that the warden and chaplain have recommended such a prisoner as worthy of consideration for parole.

Respectfully,

C. C. CRABBE,

Attorney General.

3169.

APPROVAL, BONDS OF CAMBRIDGE TOWNSHIP, GUERNSEY COUNTY,
\$3,369.21.

COLUMBUS, OHIO, March 3, 1926.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.