

2051

1. PRISONERS CONFINED IN PENAL OR REFORMATORY INSTITUTIONS—RELEASE AND PAROLE—JUVENILES COMMITTED TO OHIO STATE REFORMATORY BY JUVENILE COURT—SECTION 1639-30, PARAGRAPH 5 G. C.—WILL CONTINUE TO BE GOVERNED BY PROVISIONS OF SECTION 2209 ET SEQ., G. C.—TRANSFER TO MARION TRAINING SCHOOL.
2. RELEASE AND PAROLE OF DELINQUENT YOUTHS COMMITTED TO BOYS' INDUSTRIAL SCHOOL—SECTION 2083 ET SEQ., G. C.—TRANSFER TO MARION TRAINING SCHOOL.
3. SPECIAL PROVISIONS, SECTION 2148-8 G. C.—RELEASE AND PAROLE OF GIRLS TRANSFERRED FROM GIRLS' INDUSTRIAL SCHOOL TO OHIO REFORMATORY FOR WOMEN—ENACTED AT LATER DATE—WILL PREVAIL OVER CONFLICT IN SECTION 2209-23 G. C.

## SYLLABUS:

1. The release and parole of prisoners confined in penal or reformatory institutions, including juveniles committed to the Ohio State Reformatory by a juvenile court under the provisions of paragraph 5, Section 1639-30, General Code, will continue to be governed by the provisions of Section 2209, et seq., General Code, notwithstanding the transfer of such persons to the Marion Training School.

2. The release and parole of delinquent youths committed to the Boys' Industrial School will continue to be governed by the provisions of Section 2083, et seq., General Code, notwithstanding the transfer of such persons to the Marion Training School.

3. The special provisions of Section 2148-8, General Code, relative to the release and parole of girls who have been transferred from the Girls' Industrial School to the Ohio Reformatory for Women, having been enacted at a later date, will prevail over the conflicting general provisions of Section 2209-23, General Code.

Columbus, Ohio, July 24, 1950

Hon. J. H. Lamneck, Director, Department of Public Welfare  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Under the provisions of Sections 1841-2a and 1841-2b of

the General Code, the Department of Public Welfare has established the Marion Training School on 1,243 acres of land located near Marion, Ohio, deeded to the State by the federal government.

"While the Legislature has made appropriations to develop the Marion Training School site, there is no provision in the General Code specifically referring to this institution. The Executive Order establishing this institution reads as follows:

"Upon the effective date of this Order, the Marion Training School is ordered transferred from the Division of Juvenile Research, Classification, and Training to the Division of Corrections and shall be operated as a Training School of the Department of Public Welfare under the following procedure.

#### I. NAME AND LOCATION.

Said Marion Training School shall continue to be officially known as the Marion Training School within the Division of Corrections, and shall be located on the site of the former Scioto Ordnance property, consisting of 1,243 acres of land deeded to the State of Ohio by the Federal Government.

#### II. PURPOSE.

The Marion Training School shall be used as a School to be approved by the Ohio State Department of Education for the training, vocational and academic instruction, and confinement of juvenile delinquents and other persons committed thereto by the Courts of the State of Ohio having competent jurisdiction, under courses approved by and in accordance with the requirements of the Ohio State Department of Education.

#### III. ADMISSIONS.

Admissions to the Marion Training School shall be limited to delinquent boys over 16 years of age committed to the care of the State Department of Public Welfare, and other young men sentenced by the Criminal Courts of this State as provided by law, who are capable of receiving academic and vocational training at a training school and would benefit thereby and be proper wards for such a school.

#### IV. METHOD OF ADMISSIONS.

Admissions to the Marion Training School shall be made as follows:

A. On the recommendation of any reception center

maintained by the Division of Corrections, qualified to interview, study, test, observe, examine, and classify offenders, and upon order of the Division of Corrections.

- B. On the recommendation of any reception center maintained by the Division of Juvenile Research, Classification, and Training, qualified to interview, study, test, observe, examine and classify juvenile delinquents, including the Bureau of Juvenile Research, and upon order of the Department of Public Welfare.
- C. By transfer from other institutions of the State as provided by law.

#### V. TRANSFERS.

Any person admitted to the Marion Training School shall not be deemed to be an inmate for the full period of his commitment or sentence at said school, but shall be maintained and trained thereat only for such period as his progress and training indicates. Any person admitted thereto may be transferred therefrom to any other appropriate institution consistent with his commitment or sentence and as provided by law upon the order of the Department.

#### VI. PAROLES.

Releases or paroles from said institution shall be made as provided by the authority having jurisdiction over the person of an inmate. Persons released on parole from said institution shall be under the jurisdiction of the appropriate parole authority as provided by law.

#### VII. POLICY.

It shall be the policy to maintain the Marion Training School as an educational institution with the specialized objective of restoring its inmates to citizenship, and for academic and vocational training. Its inmates shall not be used for either agricultural or industrial production, except such as may be incidental to and required as a part of academic or vocational training.

“This order shall become effective on and after the 3rd day of *April*, 1950.

“BY ORDER OF THE DIRECTOR OF PUBLIC WELFARE OF THE STATE OF OHIO, THIS 3rd DAY OF *April*, 1950.’

“Since the Marion Training School will be operated as a separate administrative unit, a question has arisen as to the authority having jurisdiction to grant releases or paroles from said institution. I am, therefore, respectfully asking your opinion on the following:

- “1. Can Paragraph 4 of Section 2209 of the General Code be construed to include the Marion Training School as established under the aforesaid executive order, as it applies to persons convicted of felonies and admitted to such institutions?
- “2. Can paragraph 4 of Section 2209 of the General Code be construed to include the Marion Training School as it relates to juveniles who were committed to the care and training of the State as juvenile delinquents by the Juvenile Courts of this State?
- “3. If paragraph 4 of Section 2209 of the General Code does not include the aforesaid Marion Training School as it relates to juvenile delinquents, what would be the procedure for releasing or discharging juvenile delinquents from said institution?

We also desire your opinion on the following:

Under Section 2148-8, it is provided that juvenile delinquents transferred from the Girls' Industrial School to the Marysville Reformatory 'may be paroled or released upon the recommendation of the Superintendent of the Reformatory and the approval of the Department of Public Welfare.' Does this mean that the juveniles transferred to said institution may be released upon the recommendation of the Superintendent with the approval of the Director of the Department; or that such persons may be released upon the recommendation of the Superintendent and by order of the Pardon and Parole Commission?

“In this connection, I wish to call to your attention that Section 2148-8 became effective on August 27, 1943, and the Pardon and Parole Code became effective on May 3, 1939. Attorney General's Opinion No. 1544, rendered in 1939, would not, therefore, apply. I also call to your attention Sections 1639-30, 2083, 2112, 2131-1, and 2209-8 of the General Code; and Attorney General's Opinion No. 5087, rendered in 1942.”

The questions you present require first, an examination of the nature of the Marion Training School as a state institution, and second, a study of the various classes of wards of the state whom you propose to train in that school.

The legal existence of the Marion Training School, although not recognized in any permanent statute, was clearly recognized by the legislature by the provision of funds for this institution in the general appropriation act for the biennium ending June 30, 1951, Amended House Bill No. 655, approved by the governor on July 29, 1949. That act contained the following item:

“MARION TRAINING SCHOOL

“G 2	Buildings	
	Security Receiving Building....	\$200,000.
	Rehabilitation of Present Buildings and Grounds.....	100,000.
“G 31	Equipment	
	Heating Equipment and Service Units .....	47,500.
	Equipment for Receiving Cottage	35,000.
	Cottage and Household Equipment .....	75,000.
	Agricultural Equipment .....	15,000.
	Office Equipment .....	6,000.
	Vocational Training and Shop Equipment .....	75,000.
	Automotive Equipment .....	12,000.
	TOTAL .....	<u>\$565,500.”</u>

Subsequently, on April 3, 1950, an executive order was promulgated by the Director of Public Welfare, under authority of Section 1841-2b, General Code, which, when approved by the governor, established the purpose of this institution. This section reads as follows:

“The director of public welfare shall have continuing power from time to time by executive order with the approval of the governor to change the purpose for which any institution or place in the department of public welfare is being used whether such institution is now in existence or may hereafter be acquired or constructed, and he may designate a new or another use for such institution, providing such change of use and new designation has for its objective improvement in the classification, segregation, care, education, cure or rehabilitation of the wards of the state.”

I find nothing in the constitution or laws of the state which would prohibit such action. Moreover, the language of Section 1841-2b is clearly indicative of an intent by the legislature that the discretion so vested in

the director and the governor should be exercised with reference to institutions "now in existence" or which "may hereafter be acquired or constructed." By appropriating money for the construction of The Marion Training School the legislature has, I think, both recognized this institution as "now in existence" and, by appropriating money for construction purposes, recognized that it was not yet in operation.

Again Section 1841-2b recognizes that the director and governor will have occasion to use the discretion vested in them with reference, from time to time, to institutions which are legally "in existence" but which are not yet operating. This recognition is apparent in that clause of the section which authorizes them to "\* \* \* designate a *new* or another use for such institution \* \* \*." (Emphasis added.)

The next question to be considered is that of the classification of the Marion Training School as a state institution, this being of considerable importance in view of the prohibition found in Section 1841-2a, General Code, which reads in part as follows:

"All persons sentenced or committed to any institution, division or place under the control and management of the department of public welfare shall be considered as committed to the control, care and custody of such department. \* \* \*

"\* \* \* Any person sentenced, committed or assigned to any one of the institutions or places maintained by the department of public welfare may, from time to time, by order of the department duly recorded, and subject to other provisions of law, be transferred to any other institution; and provided that, except as otherwise provided by law, no person shall be transferred from a benevolent to a penal institution."

In the codification act of 1910, Amended Senate Bill No. 2, approved by the governor on February 15, 1910, state institutions were classified, in the chapter headings of Part First, Title 5, as (a) Benevolent, (b) Corrective and (c) Penal. The last class included the Ohio Penitentiary and the Ohio Reformatory; the second class included the Boys' Industrial School and the Girls' Industrial School; and the first included the numerous hospitals and schools for handicapped persons.

As among these classes I am unable to say that The Marion Training School falls into any of them. Since the legislature has failed to classify it and there is no statutory suggestion that the director and the governor may, by executive order, classify it, I am forced to conclude that it falls

into none of the classes of state institutions listed above, but into a unique and special class to itself.

We may now survey the several classes of wards whom it is proposed under the terms of the executive order of April 3, 1950, to train in this institution. As I understand your purpose, these persons will fall into three classes, viz.:

- a. Convicted persons who have been sentenced to a term of imprisonment in a penal institution, i.e., the Ohio Penitentiary or the Ohio State Reformatory;
- b. Juveniles committed to the Ohio State Reformatory under the provisions of paragraph 5, Section 1639-30, General Code; and
- c. Convicted youths who have been sentenced to Boys' Industrial School under authority of Section 2085, General Code, or delinquent youths who have been committed to Boys' Industrial School upon recommendation of a grand jury under authority of Section 2086, General Code, without indictment.

The first three questions presented in your inquiry all concern the proper authority and procedure for parole or release of students from the Marion Training School.

Now it is obvious that the legislature has not expressly provided such authority nor expressly prescribed any procedure for parole or release *with reference to this institution*. Further, since we have concluded that this institution is neither penal nor reformatory nor correctional, it must follow that the provisions of paragraph 4, Section 2209, General Code, cannot include the Marion Training School. Moreover, there is an even stronger reason for its not being included within the provisions of this paragraph, namely the legal maxim "Enumeratio unius est exclusio alterius," the naming of one thing is the exclusion of others. Since only the Ohio Penitentiary, the London Prison Farm, the Ohio State Reformatory and the Ohio Reformatory for Women are named, it must follow that the Marion Training School, as an institution, is excluded. This does not mean, however, that the provisions of Section 2209, et seq., General Code, do not apply to prisoners committed or sentenced to a penal or reformatory institution, and thereafter transferred to the Marion Training School.

The problem is much clarified, I think, simply by recalling to mind that under the presently existing statutes no person can legally be sentenced or committed to the Marion Training School directly. Courts must continue, of necessity, to sentence convicts or commit juveniles to a penal or reformatory institution; and must, of necessity, continue to commit delinquent youths to a correctional institution.

Even though they may be transferred to other institutions under authority of Section 1841-2a, General Code, or even though they may **initially go through a receiving and classification center** and thence directly to an institution other than the one to which sentenced or committed, it is my notion that such persons will, in the absence of legislative provision to the contrary, retain their essential legal status as (a) convicts under sentence to a penal or reformatory institution, (b) juveniles committed to a reformatory institution, or (c) convicted or delinquent youths committed to a correctional institution. Moreover, in passing, it is worth noting that this view is wholly consistent with the provisions of Section V of the executive order of April 3, 1950, relative to the transfer of a person *from* the Marion Training School to "any other appropriate institution consistent with his commitment or sentence."

Accordingly, as to questions of release and parole, because persons transferred to Marion Training School will retain their essential legal status as indicated above, I must conclude that such transfers will have no effect in making such persons subject to statutory provisions regarding release and parole different from the statutes which would have applied had they been retained in those institutions to which they were originally sentenced or committed.

More specifically, I conclude that convicted persons under sentence to a penal or reformatory institution will, as to matters of release and parole, continue, notwithstanding transfer to Marion Training School, to be subject to the provisions of Section 2209, et seq., General Code. Release and parole of juveniles committed to the Ohio State Reformatory will, I think, continue to be governed by Sections 2209, et seq., General Code, in harmony with an opinion of one of my predecessors, Opinion No. 1544, Opinions of the Attorney General for 1939, which held that the special provisions of Section 2131-1, General Code, concerning such juveniles were expressly repealed by subsequent enactment of Sections 2209 to 2209-23, General Code. And finally, it is my notion that release

and parole of delinquent youths who have been committed to the Boys' Industrial School and subsequently transferred to Marion Training School will continue to be governed by the provisions of Sections 2083, et seq., General Code.

Your fourth question, regarding the construction of Section 2148-8, General Code, presents little difficulty. It is assumed that your doubt arises from the conflict between the provisions of Section 2209-23, General Code, vesting parole authority in the Pardon and Parole Commission with respect to the inmates of reformatory institutions, and the provisions of Section 2148-8, General Code, prescribing a special means of parole and release with respect to inmates of Girls' Industrial School who are transferred to the Ohio Reformatory for Women.

It is an accepted rule of statutory construction that that which is implied and general is restricted by that which is express and specific. Moreover, the later of two conflicting statutes must be given effect under the rule stated in *State, ex rel. Guilbert v. Halliday*, 63 O. S. 165. The first branch of the syllabus in that case reads as follows:

"In so far as two statutes are irreconcilable, effect must be given to the one which is the later."

Accordingly, since Section 2209-33, General Code, was enacted effective May 3, 1939, and Section 2148-8, General Code, was enacted effective August 27, 1943, it follows that the latter must prevail over the former.

For the reasons above outlined and in specific answer to your questions, it is my opinion that:

1. The release and parole of prisoners confined in penal or reformatory institutions, including juveniles committed to the Ohio State Reformatory by a juvenile court under the provisions of paragraph 5, Section 1639-30, General Code, will continue to be governed by the provisions of Sections 2209, et seq., General Code, notwithstanding the transfer of such persons to the Marion Training School.

2. The release and parole of delinquent youths committed to the Boys' Industrial School will continue to be governed by the provisions of Section 2083, et seq., General Code, notwithstanding the transfer of such persons to the Marion Training School.

3. The special provisions of Section 2148-8, General Code, relative to the release and parole of girls who have been transferred from the Girls' Industrial School to the Ohio Reformatory for Women, having been enacted at a later date, will prevail over the conflicting general provisions of Section 2209-23, General Code.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.