

While your fourth question makes no reference to two physicians being in attendance, this fact is referred to in the second paragraph of your letter. Section 4436 provides that medical attendance shall be furnished in such cases but makes no reference to the extent of such attendance or the number of physicians which may be necessary in any given case. Conceivably in the event of an emergency, when conditions required the services of a second physician, in addition to those of the physician ordered in attendance by the board of health, the health commissioner would be justified in rendering professional services and, under the holding of the court in the case of *Barberton vs. Lohmers*, supra, should be compensated therefor unless such services are within his duties as health commissioner.

Specifically answering your fourth question, I am of the opinion that under the provisions of Section 4436, General Code, when a house or other place is quarantined on account of contagious disease, a part time health commissioner may be in attendance of a case in a house or other place so quarantined, without the express or implied consent of the township trustees of the township in which such house or place is located. I am further of the opinion that in the event a part time health commissioner is in attendance in such case, either upon his own order or upon the order of the board of health, he may be compensated for such services by the township trustees in addition to his salary as part time health commissioner, providing the persons quarantined are unable to pay and further providing that such services are not within his duties of health commissioner.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

592.

PRISONERS—FEMALE—WHEN CONFINED IN OHIO REFORMATORY  
FOR WOMEN—WHERE MISDEMEANANTS AND DELINQUENTS BE-  
TWEEN AGES OF 16 AND 18 MAY BE DETAINED.

SYLLABUS:

1. *Under the provisions of Section 2148-1, General Code, as amended on April 2, 1929, by the 88th General Assembly, which act becomes effective on July 23, 1929, the Ohio Reformatory for Women may only be used for the detention of females over sixteen years of age convicted of a felony, or for the detention of female prisoners transferred from the Ohio Penitentiary or Girls' Industrial School.*
2. *Females convicted of a misdemeanor, under the statutes of Ohio, may be sentenced to the workhouse or county jail, or remanded to the workhouse or county jail, for failure to pay a fine and costs imposed as a whole or part of a sentence, in the same manner as male prisoners are now sentenced to such institution.*
3. *Females over sixteen years of age, and under the age of eighteen years, convicted of delinquency, may be sentenced to the Girls' Industrial School.*
4. *That Section 2148-12a of the General Code, is repealed by implication.*

COLUMBUS, OHIO, July 3, 1929.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

“Our opinion has been requested regarding the effect of House Bill

No. 234 amending Sections 2148-1 and 2148-5 of the General Code and we would appreciate very much the benefit of your opinion thereon.

Section 2148-1 of the General Code, provides that it shall be unlawful to sentence any female convicted of a misdemeanor or delinquency to be confined in any place except the reformatory for women, the girls' industrial school, or other institutions of juvenile delinquency unless such person is over 16 years of age and has been sentenced for less than thirty days or is remanded to jail in default of payment of either fine or costs or both which will cause imprisonment for less than thirty days.

The amendment to 2148-1 omits the words misdemeanor and delinquency. The questions arising under this are:

First: Can the court after the amendment goes into effect sentence a female convicted for a misdemeanor to the Ohio Reformatory for Women where the sentence is thirty days or more?

Second: If it cannot, how will a sentence upon conviction of a misdemeanor or delinquency which is confinement for thirty days or more, be carried into effect?"

On April 2, 1929, the 88th General Assembly passed House Bill No. 234, which is known as the Derr Law. This act goes into effect on July 23, 1929, and reads as follows:

"SECTION 1. That Section 2148-1 and 2148-5 of the General Code be amended to read as follows:

Sec. 2148-1. The Ohio reformatory for women shall be used for the detention of all females over \* \* \* sixteen years of age, convicted of felony, \* \* \* as hereinafter provided, and for the detention of such female prisoners as shall be transferred thereto from the Ohio penitentiary and the girls' industrial school as hereinafter provided, except that no female convicted of a violation of an ordinance of a municipal corporation shall be sentenced to or detained in said reformatory.

Sec. 2148-5. \* \* \* All female persons over sixteen years of age, convicted of felony, except murder in the first degree without the benefit of recommendation of mercy, shall be sentenced to the Ohio reformatory for women in the same manner as male persons are now sentenced to the Ohio state reformatory. And in so far as applicable, the laws relating to the management of the Ohio state reformatory and the control and management thereof, shall apply to the Ohio reformatory for women.

SECTION 2. That existing Sections 2148-1, 2148-5, 2148-6 and 2148-7 of the General Code be, and the same are hereby repealed."

Section 2148-1, General Code, as it now exists, reads as follows:

"The Ohio reformatory for women shall be used for the detention of all females over sixteen years of age, convicted of a felony, misdemeanor, or delinquency as hereinafter provided, and for the detention of such female prisoners as shall be transferred thereto from the Ohio penitentiary and the girls' industrial school as hereinafter provided, except that no female convicted of a violation of an ordinance of a municipal corporation shall be sentenced to or detained in said reformatory."

Section 2148-5, General Code, now reads as follows:

"As soon as the governor shall be satisfied that suitable buildings have

been erected and are ready for use and for the reception of women convicted of felony he shall issue a proclamation to that effect, attested by the secretary of state, and the secretary of state shall furnish printed copies of such proclamation to the county clerks of courts and from the date of said proclamation all portions of this act except those relating to the commitment of misdemeanants and delinquents shall be in full force and effect. Whenever additional buildings have been completed so as to care for misdemeanants and delinquents a proclamation shall be issued and published in the same manner and copies furnished to county clerks of courts and to all judges and magistrates having authority to sentence misdemeanants and delinquents and from and after the date of this proclamation all portions of this act relating to the commitment of persons to said reformatory shall be in full force and effect.

All female persons convicted of felony, except murder in the first degree without the benefit of recommendation of mercy, shall be sentenced to the Ohio reformatory for women in the same manner as male persons are now sentenced to the Ohio state reformatory. And in so far as applicable, the laws relating to the management of the Ohio state reformatory and the control and management thereof, shall apply to the Ohio reformatory for women."

Section 2148-6, General Code, provides as follows:

"Female persons over sixteen years of age found guilty of a misdemeanor by any court of this state shall be sentenced to the Ohio reformatory for women and be subject to the control of the Ohio board of administration, but all such persons shall be eligible to parole under the provisions of this act (G. C. 2148-2, 2148-6, 2148-8 to 2148-10)."

Section 2148-7, General Code, provides as follows:

"After the issuance of the first proclamation hereinbefore referred to, it shall be unlawful to sentence any female convicted of a felony to be confined in either the Ohio penitentiary or a jail, workhouse, house of correction or other correctional or penal institution, and after the issuance of the second proclamation it shall be unlawful to sentence any female convicted of a misdemeanor or delinquency to be confined in any such place, except in both cases the reformatory herein provided for, the girls' industrial school or other institution for juvenile delinquency, unless such person is over sixteen years of age and has been sentenced for less than thirty days, or is remanded to jail in default of payment of either fine or costs or both, which will cause imprisonment for less than thirty days, provided that this section shall not apply to imprisonment for contempt of court, or to females convicted of a violation of an ordinance of a municipal corporation."

The language employed by the Legislature in Sections 2148-1 and 2148-5, General Code, as amended by the 88th General Assembly, is clear and unambiguous and requires no statutory construction. It is very apparent that the Legislature intended by amending Sections 2148-1 and 2148-5 of the General Code, and repealing Sections 2148-6 and 2148-7 of the General Code, that the Ohio Reformatory for Women should only be used as a place of detention for females over sixteen years of age convicted of a felony, and for the detention of female prisoners transferred thereto from the Ohio Penitentiary and the Girls' Industrial School. However, some difficulty is presented by the provisions of Section 2148-12a of the General Code, which provides as follows:

"When a female is sentenced to pay a fine and costs as a whole or part of her sentence, which said fine and costs will cause imprisonment for thirty days or more, the court or magistrate may order that said female so sentenced be remanded to the Ohio reformatory for women until such fine and costs are paid, or secured to be paid, or she is otherwise legally discharged, provided that the female so imprisoned shall receive credit upon such fine and costs at the rate of one dollar and fifty cents (\$1.50) per day for each days imprisonment; and provided, further, that this section shall not apply to imprisonment of females convicted of a violation of an ordinance of a municipal corporation."

You will note from a reading of this section that if a female is sentenced to pay a fine and costs as a whole or part of her sentence, which said fine and costs will cause imprisonment for thirty days or more, the court or magistrate may order that said female so sentenced be remanded to the Ohio Reformatory for Women. It is difficult to harmonize this section with Section 2148-1, General Code, as amended, because Section 2148-1, General Code, as amended, provides that the Ohio Reformatory for Women shall be used for the detention of females over sixteen years of age convicted of felony and it is apparent that under Section 2148-12a, General Code, if persons are convicted of a misdemeanor, and a fine or costs as a whole or part of the sentence will cause imprisonment for thirty days or more, the court may order that said female be sentenced to the Ohio Reformatory for Women. It seems to me that the Legislature by amending Section 2148-1, General Code, so as to exclude females convicted of misdemeanors and delinquencies intended that the Ohio Reformatory for Women should be used solely as a place of imprisonment for females who were sentenced for a longer term of imprisonment than one year. It may be urged that Sections 2148-12a and 2148-1, General Code, as amended, are not repugnant to each other, because a person may be convicted of a felony and the court may impose a fine as the sentence, and therefore, under those circumstances the female who was so sentenced for a violation of a felony statute could be imprisoned in the Reformatory for Women. However, there are very few felony statutes that provide a fine as a part of the penalty, and I believe that it was only an oversight on the part of the Legislature in failing to repeal Section 2148-12a, General Code. I do not believe that these two sections referred to herein can be harmonized so as to carry out the purpose and intent of the Legislature in enacting House Bill No. 234. While it is true that repeals by implication are not favored, yet an implied repeal results from some enactment the terms and necessary operation of which cannot be harmonized with the terms of an earlier act. In such case the later law prevails as a last expression of the legislative will, and therefore I am of the view that Section 2148-12a, General Code, is repealed by implication.

Therefore, your first inquiry as to whether or not, after House Bill No. 234 goes into effect, females convicted for a misdemeanor may be sentenced to the Ohio Reformatory for Women, where sentence is thirty days or more, must be answered in the negative.

As to your second inquiry, with reference to where females convicted of misdemeanors or delinquency should be confined after House Bill No. 234 goes into effect, your attention is directed to statutes relating to the imprisonment of persons convicted generally for a violation of misdemeanors and delinquencies under the State statutes.

Section 4128, General Code, provides:

"When a person over sixteen years of age is convicted of an offense under

the law of the state or an ordinance of a municipal corporation, and the tribunal before which the conviction is had is authorized by law to commit the offender to the county jail or corporation prison, the court, mayor, or justice of the peace, as the case may be, may sentence the offender to the workhouse, if there is such house in the county. \* \* \* "

Section 12370, General Code, in so far as it is pertinent to your inquiry, provides:

" 'imprisonment,' where the context does not otherwise require, means imprisoned in the county jail if the maximum term prescribed for the offense is one year, and imprisoned in the penitentiary if the maximum term prescribed for the offense is longer than one year."

Sections 4151 and 12387, General Code, provide that persons may be committed to a workhouse for failure to pay a fine and costs imposed as a whole or part of a sentence, and Section 13717, General Code, provides that persons may be committed to a county jail for failure to pay a fine and costs imposed as a whole or part of a sentence. These statutes do not distinguish between males and females convicted of misdemeanors under the statutes of Ohio, and therefore females convicted of a misdemeanor under the State statutes may be sentenced to the county jail or the workhouse in the same manner as male prisoners are now sentenced to such institutions.

Section 1644, General Code, defines a delinquent child, and such definition includes any child under eighteen years of age who violates the law in this State. Section 1652, General Code, provides for the commitment of a delinquent child. It provides in part, that a judge may commit a delinquent child, if a girl, to an industrial school for girls. Section 1653-1, General Code, provides that the provisions of Section 1652, General Code, shall not apply to the Girls' Industrial School or the Boys' Industrial School, so far as the same allows the commitment of a child under ten years, or over eighteen years of age to such institution.

From a reading of these sections pertinent to delinquent children, it appears that if a female child is convicted of a delinquency, and is over the age of sixteen, and under the age of eighteen years, she may be sentenced to the Girls' Industrial School.

I am therefore of the opinion that under the provisions of Section 2148-1, General Code, as amended on April 2, 1929, by the 88th General Assembly, which act becomes effective on July 23, 1929, the Ohio Reformatory for Women may only be used for the detention of females over sixteen years of age convicted of a felony, or for the detention of female prisoners transferred from the Ohio Penitentiary or Girls' Industrial School.

Females convicted of a misdemeanor, under the statutes of Ohio, may be sentenced to the workhouse or county jail, or remanded to the workhouse or county jail, for failure to pay a fine and costs imposed as a whole or part of a sentence, in the same manner as male prisoners are now sentenced to such institution.

Females over sixteen years of age, and under the age of eighteen years, convicted of delinquency, may be sentenced to the Girls' Industrial School.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*