

means of security" are followed in the statute by the words "*in the office* of the county treasurer." It is apparent that the "other means of security" which the legislature intended might be furnished by the commissioners is to be *in the office* of the treasurer which is additional evidence that the intention of the statute is that the other means of security are to be means of security similar to fire-proof and burglar-proof vaults and safes.

Specifically answering your question, I am of the opinion that "other means of security in the county treasury" as used in Section 2419, *supra*, cannot be given such construction as to authorize the county commissioners to purchase and pay for from county funds burglary or hold-up insurance or insurance against forgery for the protection of the county treasurer.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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OHIO BOARD OF CLEMENCY—PAROLE FROM OHIO STATE REFORMATORY—LAWS APPLICABLE TO THE OHIO PENITENTIARY DISTINGUISHED.

**SYLLABUS:**

*The Ohio Board of Clemency has authority to establish rules and regulations under which prisoners of the Ohio State Reformatory may be allowed to go upon parole in legal custody before such prisoners have served the minimum term provided by law for the felony for which they were convicted, the only limitation upon the board's power being that such prisoners must be recommended as worthy of such consideration by the superintendent and chaplain of the reformatory before such applications for parole may be considered.*

*Laws applicable to the Ohio Penitentiary distinguished.*

COLUMBUS, OHIO, June 2, 1927.

HON. EDWARD C. STANTON, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

"Your opinion is requested upon the following subject:

Under the provisions of Section 2132, General Code, the Ohio Board of Administration may parole prisoners confined in the Ohio State Reformatory.

The question is whether the language in that section 'but the term of such imprisonment shall not exceed the maximum nor be less than the minimum term provided by law for such felony,' limits the right of the Board to grant a parole taken in connection with the various provisions of law fixing a minimum and maximum term of imprisonment for the various crimes."

Section 2132, General Code, about which you inquire, provides:

"Courts imposing sentences to the Ohio state reformatory shall make them general, and not fixed or limited in their duration. The term of imprisonment of prisoners shall be terminated by the Ohio board of administration, as authorized by this chapter, but the term of such imprisonment

shall not exceed the maximum term, nor be less than the minimum term provided by law for such felony."

Other sections of the General Code pertinent to your inquiry are sections 2141 and 2142, which read as follows:

"Sec. 2141. The Ohio board of administration shall establish rules and regulations under which prisoners may be allowed to go upon parole in legal custody, under the control of the Ohio board of administration and subject to be taken back into the enclosure of the reformatory. A prisoner shall not be eligible to parole, and an application for parole shall not be considered by the board, until such prisoner has been recommended as worthy of such consideration by the superintendent and chaplain of the reformatory."

"Sec. 2142. Before consideration by the Ohio Board of Administration notice of such recommendation shall be published for three consecutive weeks in two newspapers of opposite politics in the county from which the prisoner is sentenced, or in the county of the residence of the prisoner. The expense of such publication shall not exceed one dollar for each paper. A prisoner shall not be released upon parole unless, in the judgment of the board, there is 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. Such judgment shall be based upon the record and character of the prisoner in the reformatory, his previous record, the nature and character of the crime committed and other facts which the board may be able to obtain bearing upon the advisability of such parole. A prisoner shall not be paroled without receiving the votes of all members of the board present at a regular or special meeting, and when a prisoner so paroled, has during such parole performed all the conditions imposed, the Ohio board of administration may finally release and discharge him."

By Section 92, General Code, it is provided that the Ohio Board of Clemency

"\* \* \* shall supersede and perform all of the duties now conferred by law upon the Ohio board of administration with relation to the release, parole and probation of persons confined in or under sentence to the penal or reformatory institutions of Ohio; and thereafter the said Ohio board of clemency, shall be vested with and assume and exercise all powers and duties in all matters connected with the release, parole or probation of persons confined in or under sentence to the penal institutions of Ohio now cast by law upon the said Ohio board of administration."

It is scarcely necessary here to state that the object of all statutory construction and interpretation is to ascertain the intent and purpose of the law making authority. In the instant case it must be determined what the legislature of Ohio intended when it provided in Section 2132, *supra*, that

"The term of imprisonment of prisoners shall be terminated by the Ohio board of administration, *as authorized by this chapter, (General Code, Sections 2129 to 2147, both inclusive) but the term of such imprisonment shall not exceed the maximum term, nor be less than the minimum term provided by law for such felony.*" (Italics the writer's.)

that is, what is the nature of *the term of such imprisonment* that can not be terminated until the prisoner shall have served the minimum term provided by law for such felony.

Even if Section 2132, supra, did not expressly refer to the other pertinent sections contained in the same chapter, since Sections 2141 and 2142, supra, relate to the same subject matter and are statutes *in pari materia*, they must be construed together.

It seems germane to the present inquiry to consider the character and purpose of the institution now known as the Ohio State Reformatory. The act creating this institution is found in 81 Ohio Laws 206 and is entitled:

"An act to establish an intermediate penitentiary and to provide for the appointment of a board of managers to locate, construct and manage the same."

Section 1 thereof is as follows:

"Be it enacted by the general assembly of the State of Ohio that there be established an intermediate penitentiary for the incarceration of such persons convicted and sentenced under the laws of Ohio as have not previously been sentenced to a state penitentiary in this or any other state or country."

Section 8 thereof provided in part as follows:

"The discipline to be observed in said penitentiary shall be reformatory, and the managers and wardens shall have power to use such means of reformation consistent with the improvement of the inmates as they deem expedient. Agricultural labor or mechanical industry may be resorted to by said managers and warden as an instrument of reformation. \* \* \*"

By an act passed April 30, 1891 (88 Ohio Laws 418) the name of said institution was changed to the Ohio State Reformatory, which name it now bears.

Section 2131, General Code, provides who may be sentenced to the reformatory and reads as follows:

"The superintendent shall receive all male criminals between the ages of sixteen and thirty years sentenced to the reformatory, if they are not known to have been previously sentenced to a state prison. Male persons between the ages of sixteen and twenty-one years convicted of felony shall be sentenced to the reformatory instead of the penitentiary. Such persons between the ages of twenty-one and thirty years may be sentenced to the reformatory if the court passing sentence deems them amenable to reformatory methods. No person convicted of murder in the first or second degree shall be sentenced or transferred to the reformatory."

Section 2135, General Code, relates to control and record of inmates and provides:

"The Ohio board of administration shall maintain such control over prisoners committed to its custody as may prevent them from committing crime, secure their self-support and accomplish their reformation. When a prisoner is received the superintendent shall cause to be entered in a register the date of his admission, his name, age, nativity and nationality, with such facts as can be ascertained of his parentage, early education and social influences which indicate the constitutional defects and tendencies of the prisoner and the best probable plan of treatment. Upon such register shall be entered quarterly, or oftener, minutes of observed improvement or deterioration of character and notes as to methods and treatment employed. All orders or alterations affecting the standing or situation of the prisoner, the

circumstances of his final release and subsequent facts of his personal history which may be brought to the knowledge of the superintendent shall also be entered therein."

Section 2136, General Code, relates to discipline therein and reads:

"The discipline to be observed in the institution shall be reformatory and the Ohio board of administration shall employ such means for reformation or improvement as may be expedient."

From an examination of the above quoted sections it will be noted that the Ohio State Reformatory is a penal institution, to which young offenders, not known to have been previously sentenced to a state prison, are committed and in which repressive and punitive measures are subordinated to training in industry and the exercise of the physical, mental and moral faculties.

In the light of the foregoing, it is only reasonable and proper that the legislature should have provided rules and regulations for parole different from those applicable to inmates of the Ohio penitentiary. (Sections 2160, to 2175, both inclusive, General Code).

Although section 2132, supra, together with section 2133, General Code is analogous to section 2166, General Code, the provisions of sections 2141 and 2142, supra, authorizing parole of prisoners confined in the Ohio State Reformatory are entirely different from the provisions of section 2169, General Code, which makes provisions for the parole of prisoners confined in the Ohio Penitentiary.

By the provisions of section 2141, supra, the Ohio board of administration (now the Ohio Board of Clemency) is given power to establish rules and regulations under which prisoners in the reformatory may be allowed to go upon parole in legal custody, under the control of the Ohio board of clemency and subject to be taken back into the enclosure of the reformatory. *The only limitation upon the board's power to parole is that "a prisoner shall not be eligible to parole, and an application for parole shall not be considered by such board, until such prisoner has been recommended as worthy of such consideration by the superintendent and chaplain of the reformatory."*

The limitations contained in section 2169, General Code, relating to the Ohio penitentiary are much different. In this section the board is authorized to establish rules and regulations by which a prisoner not under sentence for treason or first or second degree murder "*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.* This language is plain and unambiguous, and in the case of the penitentiary no authority whatever is given to the board to establish rules for allowing the *parole of prisoners outside the building and inclosure of the penitentiary,* except those who have served the *minimum term provided by law,* the statute further providing that in case of prisoners under sentence for murder in the second degree, such prisoners are not eligible for parole until they have served ten full years.

As pointed out in Opinion No. 221, dated March 22, 1927, Opinions, Attorney General, 1927, *it being the positive duty of the trial court to fix the minimum period of duration of the sentence of imprisonment, imposed upon a prisoner, (section 2166, General Code) that minimum so fixed is "the minimum term provided by law" as that phrase is used in section 2169, General Code.*

In neither section 2132 nor 2141, supra, relating to the reformatory is there any provision to the effect that a prisoner in the reformatory must have "*served a minimum term provided by law for the crime for which he was convicted*" before the board of clemency may allow such prisoner "*to go upon parole outside the building and en-*

*closure*' of the institution as there is in sections 2166 and 2169, above referred to, relating to the Ohio penitentiary, which sections must be read in connection with section 2160 of the General Code. Moreover, it will be noted that section 2166 was recently amended by the legislature (109 v. 64) so as to provide that in sentencing prisoners to the Ohio penitentiary the courts must "fix, within the limits prescribed by law, a minimum period of duration of such sentences." No such provision was made with reference to prisoners sentenced to the Ohio State Reformatory. By this act alone the legislature has manifested a clear intention to distinguish between the two institutions and to require in the case of the penitentiary that before a prisoner may be allowed to go upon parole without the walls and the enclosure he must serve a definite period of confinement in the institution.

An examination and comparison of sections 2132, 2141, 2160, 2166 and 2169 discloses that the phrase "term of imprisonment" as used in section 2132 is synonymous with the word "sentence" and refers not to actual physical confinement within the walls of the reformatory, but to the term for which the prisoner is in legal custody of the state. The provisions of this section prohibit the termination of the sentence, that is, the period for which the prisoner is in legal custody until the expiration of the minimum term provided by law for the felony of which he was convicted. Section 2141, on the other hand, refers to a parole without the walls while the sentence or term of imprisonment still continues to be in existence. In other words, section 2132, *supra*, operates only to prevent the termination of the *term* of imprisonment sooner than the minimum term provided by law for the felony for which the prisoner was convicted. *It does not prevent* the granting of a parole in legal custody sooner than the minimum term provided by law for such felony for a parole does not end the *term* of imprisonment.

"Parole" merely allows the prisoner to go outside of the prison walls or, as section 2141, *supra*, states "to go upon parole *in legal custody*, under the control of the board of administration (now the Ohio Board of clemency) and *subject to be taken back into the enclosure of the reformatory.*" As stated in 24 Am. and Eng. Enc. Law 2nd ed. page 553:

"The release of a prisoner on parole does not amount to a commutation of his sentence, since it does not change his punishment into a less severe one; the sentence remaining in force, and the prisoner, while enjoying his liberty, being liable to be reimprisoned at any time."

Like conclusions were reached by my predecessor in office, the Honorable John G. Price, in letter addressed to the record clerk of the Ohio State Reformatory, under date of December 22, 1921.

In view of the foregoing and answering your question specifically it is my opinion that persons committed to the Ohio State Reformatory may be *paroled* by the Ohio board of clemency before the expiration of the minimum term provided by law for the felony for which they were convicted but may not be *finally* released, except by a pardon or commutation of sentence, before the expiration of such minimum term. The only limitation upon the Ohio board of clemency's power to parole is that a prisoner shall not be eligible to parole and an application for parole shall not be considered by such board, until such prisoner has been recommended as worthy of such consideration by the superintendent and chaplain of the reformatory.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*