

the teacher contracts with reference to said rule, and if at any time during the life of the contract the teacher is absent from school without leave on account of illness from a contagious disease, the board may lawfully deduct from the salary of such teacher a proportionate amount for the time of the absence.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3089.

SHERIFF—CHARGED WITH DUTY OF CONVEYING TO PENITENTIARY, PERSONS SENTENCED FROM COUNTY—MAY DESIGNATE CRIMINAL BAILIFF TO CONDUCT SUCH TRIP.

*SYLLABUS:*

*While the sheriff of the county is the proper official to convey to the penitentiary persons sentenced from the county, a criminal bailiff, when so directed by the sheriff, may conduct such prisoners to the penitentiary.*

COLUMBUS, OHIO, March 24, 1931.

HON. CHARLES T. STAHL, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication, which reads:

“A criminal bailiff is appointed under favor of section 1541, General Code. Section 1543 reads: ‘Under the direction of the sheriff, the criminal bailiff shall convey to the penitentiary all persons sentenced thereto.’

Section 13455-1, General Code, provides that all prisoners ‘shall be conveyed to the penitentiary or reformatory by the sheriff of the county.’

It seems to me the reasonable construction of these two sections would be to recognize that the responsibility of caring for prisoners is cast upon the sheriff primarily by numerous sections of the code, and to hold that section 13455-1 gives him the power and authority to transport prisoners to the penitentiary; and that the bailiff should act for the sheriff when directed.

It seems to me any other construction tends to confusion and conflict. However, I would appreciate your opinion upon this matter.”

In your letter you have quoted the pertinent part of section 1543, General Code, which first appeared in 75 O. L., p. 54.

The pertinent part of section 13455-1, General Code, reads as follows:

“A person sentenced for felony to the penitentiary or a reformatory, unless the execution thereof is suspended, shall be conveyed to the penitentiary or such reformatory, by the sheriff of the county in which the conviction was had, within five days after such sentence. \* \* \*”

This latter section was passed by the 88th General Assembly and is found in 113 O. L. 207.

In case of a conflict, it is a familiar rule of statutory construction that the later in time will prevail. However, as stated in Sutherland on Statutory Con-

struction, Vol. 1, p. 464, repeals by implication are not favored, and conflicting statutes shall be construed, if possible, so that both shall be operative.

The question you present requires a consideration of the words "under the direction of the sheriff," as used in section 1543. Volume 8 of Words and Phrases, page 7157, defines "under," among other definitions, as "to be subordinate to." Worcester. Dict., "subject to." See also, *Eslinger vs. Pratt*, 46 Pac., 763; 14 Utah, 101.

A reasonable construction of these two sections requires that the words "under the direction of the sheriff" should be construed to mean "subject to the authority of the sheriff," which would seem to be a natural interpretation of the words, and would give force and effect to both sections.

It should also be noted that by the terms of section 1541, General Code, a criminal bailiff is a deputy sheriff and, when acting as such deputy sheriff, he is under the direction and control of the sheriff.

In view of the foregoing, I am of the opinion that while the sheriff of the county is the proper official to convey to the penitentiary persons sentenced from the county, a criminal bailiff, when so directed by the sheriff, may conduct such prisoners to the penitentiary.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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3090.

APPROVAL, BONDS OF GEORGETOWN VILLAGE SCHOOL DISTRICT,  
BROWN COUNTY, OHIO—\$40,000.00.

COLUMBUS, OHIO, March 24, 1931.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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3091.

APPROVAL, LEASE TO OFFICE SPACE AT 335 SOUTH HIGH STREET,  
COLUMBUS, OHIO, FOR USE OF OHIO COMMISSION FOR THE  
BLIND.

COLUMBUS, OHIO, March 24, 1931.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a lease between Edward B. Sharp, William T. Sharp, and Rebecca E. Sharp, partners, doing business as the Sharp Realty Company, as lessor, and the State of Ohio, acting by yourself, as Director of the Department of Public Works, for the Department of Public Welfare (Ohio Commission for the Blind), as lessee, covering about 3600 square feet of floor space on the fourth floor of the South Stoneman Building at 335 South High Street, Columbus, Ohio. The proposed lease is for a term of one year, beginning on the first day of January, 1931, and ending on the thirty-first day of December, 1931, and calls for an expenditure of two thousand one hundred dollars (\$2,100.00).

You have submitted an encumbrance estimate, No. 4, bearing the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated sufficient to pay the first six months' rental.

A power of attorney discloses that H. E. Clary has authority to enter into this lease for the Sharp Realty Company.