

It is also significant that in the language referred to in Section 1c of Article II, no exception is made of Sunday, while in Section 16 of Article II, pertaining to the time within which a bill shall be returned by the Governor, the following language is used:

"If a bill shall not be returned by the Governor within ten days, *Sundays excepted*, after being presented to him, it shall become a law in like manner as if he had signed it, unless the general assembly by adjournment prevents its return; in which case, it shall become a law unless, within ten days after such adjournment, it shall be filed by him, with his objections in writing, in the office of the Secretary of State."

Specifically answering your question, I am of the opinion that in determining upon what date an act of the General Assembly goes into effect under Section 1c of Article II of the Constitution of Ohio, the day upon which the act is filed with the Secretary of State should be excluded, and that the act becomes effective on the ninetyeth day after the day upon which the act was filed by the Governor in the office of the Secretary of State, and that in computing this time no exception should be made of Sunday, whether it be the first or the last day of the ninety days after the act shall have been filed.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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OHIO PENITENTIARY—DUTY OF WARDEN WHEN CONVICTION OF PRISONER HAS BEEN REVERSED.

SYLLABUS:

Where a person has been tried and convicted and is in the penitentiary pursuant to sentence, upon a subsequent reversal of such conviction and the case being remanded to the trial court for a new trial, the Warden of the penitentiary, upon receipt of a certified copy of the mandate of the reversing court, must forthwith cause such person to be conveyed to the jail of the county in which he was convicted and committed to the custody of the sheriff thereof.

COLUMBUS, OHIO, April 5, 1927.

HON. PRESTON E. THOMAS, *Warden of Ohio Penitentiary, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of April 4, 1927, which reads:

"We have confined in this institution one John Kosienski, serial number 54874, received from Cuyahoga county on November 4, 1925, to serve a life sentence, having been convicted in the September, 1925 term of the Common Pleas Court of Cuyahoga county of the crime of murder in the first degree (with a recommendation of mercy).

I have this day received a certified copy of a Mandate of the Common Pleas Court of Cuyahoga county with a letter signed by Geo. P. Heidt, Chief Deputy Clerk, Criminal Branch of the Cuyahoga county courts, which letter is self explanatory. I am herewith enclosing both mandate and letter for your consideration.

Will you please forward me your opinion as to my legal duty in regard to returning this man to the authorities of Cuyahoga county?"

In the mandate accompanying your letter, which is dated January 17, 1927, I observe that among other things it says:

"Court of Appeals of Ohio, Eighth District, Cuyahoga county, Jan. Term, A. D. 1927. John Kosienski vs. State of Ohio. Error to Common Pleas. This cause came on to be heard upon the pleadings, and the transcript of the record in the court of Common Pleas, and was argued by counsel; upon consideration whereof, the court certifies that in its opinion substantial justice has not been done the party complaining, as shown by the record of the proceedings and judgment under review, and the judgment of the said Court of Common Pleas is reversed, for error in excluding testimony; no other error appearing in the record, and this cause is remanded to the said Court of Common Pleas for further proceedings."

Attached to the above is a certificate of George Wallace, clerk of the said Court of Appeals of that district, duly made on the 17th day of January, A. D., 1927, in which he certifies that the foregoing entry is truly taken and correctly copied from the journal of said court. I also notice that in the letter of April 2, 1927, addressed to you, George Heidt, chief deputy clerk, Criminal Branch, among other things, says:

"On the advice of the prosecuting attorney's office and Judge McMahon, who is presiding in the criminal branch of Common Pleas Court, I refuse to certify a copy of the mandate to you to have the defendant brought back and placed in the county jail to await his new trial on the theory that the Supreme Court where the case is now pending on a motion by the state, might reverse the Court of Appeals and affirm the Court of Common Pleas.

Defendant's counsel then filed an action in mandamus against Mr. Wallace, clerk of courts, and in a perfunctory hearing yesterday the court ruled he should be returned."

The convict having been received by you on a commitment from the Common Pleas Court of Cuyahoga county, for the crime of murder in the first degree, and the judgment of his conviction having now been reversed and the case remanded to the Common Pleas Court of Cuyahoga county for a retrial, I am of the opinion that the convict should now be conveyed back to that county, pursuant to the provisions of the following statutes:

"Sec. 13760: When a defendant has been committed to the penitentiary and the judgment, by virtue of which the commitment was made, is reversed on proceedings in error, under the provisions of this chapter, by which reversal such defendant is entitled * * * to a new trial, the clerk of the court reversing such judgment, under the seal thereof, shall forthwith certify it to the warden of the penitentiary.

Sec. 13762: If a new trial is ordered, the warden shall forthwith cause the defendant to be conveyed to the jail of the county in which he was convicted, and committed to the custody of the sheriff thereof."

From the mandate from the clerk of the Court of Appeals in the case and now in your possession, with reference to the reversal by the Court of Appeals of the case, I am of the opinion that under the provisions of Sections 13760 and 13762, supra, it is your duty to forthwith cause Kosienski to be conveyed to the jail of the county in which he was convicted, and committed to the custody of the sheriff of the county.

While under the provisions of Section 13764, General Code, and the law of Ohio

found in the case of *Boone vs. State of Ohio*, 109 O. S., p. 1, a criminal case, the prosecuting attorney of Cuyahoga county in the case at bar may at any time, before a retrial in the Common Pleas Court, prosecute error to the Supreme Court to reverse the judgment of the Court of Appeals in the case, I am of the opinion that the provisions of Sections 13760 and 13762, General Code, should be complied with by the warden and the prisoner conveyed to the jail of the county and into the custody of the sheriff thereof, unless the prosecutor, before the prisoner be thus returned to the county, files a motion for leave to file a petition in error in the Supreme Court in conformity with the provisions of Rule VII of the Supreme Court, and obtains a suspension of the judgment.

I desire to say that inquiry was made of the clerk of the Supreme Court to ascertain if the case was pending and if so, if there was any suspension of the judgment of the Court of Appeals by the Supreme Court, and learned that the case had not been filed and is not now pending in the Supreme Court.

I am of the opinion, therefore, that it is the duty of the warden to forthwith cause the prisoner, John Kosienski, to be conveyed to the jail of Cuyahoga county and committed to the custody of the sheriff.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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APPROVAL, BOND FOR FAITHFUL PERFORMANCE OF DUTIES—F. A. DAUM.

COLUMBUS, OHIO, April 6, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways & Public Works, Columbus, Ohio*

DEAR SIR:—You have submitted for my examination the official bond of F. A. Daum, given in accordance with the requirements of Section 1182 of the General Code to the state of Ohio in the amount of five thousand dollars (\$5,000) with the Aetna Casualty & Surety Company as surety to cover the faithful performance of his duties as Resident Deputy State Highway Commissioner.

To this bond is attached a certificate of the surety company to the effect that the person signing said bond in behalf of said company is its attorney in fact, and is authorized to sign an official bond of this nature binding said company.

It has been ascertained by this department that the said surety company is authorized to transact its business of fidelity and surety insurance in this state.

Finding said bond in proper legal form and properly executed, I have noted my approval thereon and am returning the same herewith to you.

Respectfully,
EDWARD C. TURNER,
Attorney General.