

4392.

## COUNTY COMMISSIONERS—UNAUTHORIZED TO PAROLE INDIGENT PRISONERS IN COUNTY JAIL WITHOUT CONSENT OF PROSECUTING ATTORNEY, SHERIFF AND SENTENCING JUDGE.

## SYLLABUS:

*The county commissioners, acting under section 13452-10, General Code of Ohio, cannot parole an indigent prisoner confined in the county jail only for non-payment of fine and costs without the consent of the prosecuting attorney, sheriff and the sentencing judge.*

COLUMBUS, OHIO, July 5, 1935.

HON. ROY L. HENRY, *Prosecuting Attorney, Ironton, Ohio.*

DEAR SIR:—This will acknowledge your letter which reads in part as follows:

“Can the county commissioners release a man from the county jail when he has been sentenced by the Common Pleas Court without the Judge of the Common Pleas Court signing or being consulted? In other words my question is this: Must the Prosecuting Attorney and the county commissioners go to the Common Pleas Judge in order to release someone from the county jail if they deem it advisable that he be released?”

The probation and parole of persons committed to jails and penal institutions in Ohio is governed solely by statutes in Ohio. *The Municipal Court of Toledo, et al., vs. State, ex rel. Platter*, 126 O. S., 103, 108, 109.

Section 13452-10 is the only statute in the General Code which pertains to and governs the release by county commissioners of persons incarcerated in a county jail. Section 13452-10 reads:

“The county commissioners of a county not having a workhouse, may, on the written recommendation of the judge who has tried the case and the sheriff of the county where the prisoner is confined, release on parole an indigent prisoner confined in the jail of such county, for non-payment of fine and costs alone. The parole in such case shall be in writing, signed by the prisoner so released and conditioned for the payment of the fine and costs by him in labor or money in installments or otherwise, and shall be approved by the prosecuting attorney of the county, and the provisions of G. C. §6212-17, shall not prevent the commissioners from releasing such indigent prisoner as herein provided.”

It is quite evident from a reading of this statute that the county commissioners with the consent of the sentencing judge, the prosecuting attorney and the sheriff of the county where the prisoner is confined, can release from imprisonment a prisoner who is an indigent and who is unable to pay the fine and costs assessed against him. There is no language in this section which would indicate that an indigent prisoner could be released by the county commissioners without the recommendation of the sentencing judge.

The provisions found in section 13452-10, General Code, were formerly contained

almost word for word in section 12382, General Code, which was repealed in 113 O. L., 123. Section 12382, prior to its being repealed, read:

“The county commissioners of a county not having a workhouse may, on the written recommendation of the court that has tried the case and the sheriff of the county where the prisoner is confined, release on parole an indigent prisoner confined in the jail of such county for fine and costs alone. The parole in such case shall be in writing, signed by the prisoner so released, and conditioned for the payment for (of) the fine and costs by him in labor or money in installments or otherwise, and shall be approved by the prosecuting attorney of such county, and the provisions of Sec. 6212-17 General Code shall not prevent the commissioners from releasing such indigent prisoner as herein provided.”

That statute was passed upon in the case of *Kohler vs. State, ex rel. Goldstein*, 24 O. App., 27., wherein it was held in the second paragraph of the syllabus that:

“Under Indigent Prisoners’ Act (Sections 12382, 12383, General Code), providing for parole of prisoner by unanimous consent of prosecutor, sheriff, county commissioners, and committing magistrate, prisoner must remain in jail if sheriff refuses to approve action of co-officials, and there is no remedy for his release except through action of commissioner of insolvents declaring prisoner insolvent and ordering his discharge, under Sections 11148 to 11155.”

The holding in that case likewise applies to the provisions of section 13452-10, since that statute is almost identical with section 12382 which was considered in that case.

In passing, your attention is also called to sections 2576 and 11148 to 11160, inclusive, General Code, particularly section 11150, wherein the legislature has empowered certain public officials to release from confinement persons who are indigent and insolvent.

Specifically answering your question, it is my opinion that the county commissioners, acting under section 13452-10, General Code of Ohio, cannot parole an indigent prisoner confined in the county jail only for non-payment of fine and costs without the consent of the prosecuting attorney, sheriff and the sentencing judge.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4593.

APPROVAL, TWO LEASES TO LAND IN MONTGOMERY COUNTY, OHIO,  
FOR STATE GAME REFUGE PURPOSES—MIAMI CONSERVANCY DIS-  
TRICT OF DAYTON, OHIO.

COLUMBUS, OHIO, July 6, 1935.

HON. L. WOODDELL, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval two leases