

publication, workmen's compensation certificate showing the contractor having complied with the laws of Ohio relating to compensation, form of proposal containing the contract bond signed by the Globe Indemnity Company, its power of attorney for the signer, its financial statement and its certificate of compliance with the laws of Ohio relating to surety companies, the recommendation of the Conservation Commissioner to the Director of Public Works, Controlling Board release, and the tabulation of bids received on this project.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other documents submitted in this connection.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2774.

PRISONER—BOARD OF PAROLE—MINIMUM AND MAXIMUM SENTENCE—SECTION 2210 G. C. AFFECTS TIME WITHIN WHICH PRISONER MAY BE PAROLED—LONDON PRISON FARM HAS SAME STATUS AS OHIO PENITENTIARY AS TO RIGHTS OF PRISONER SERVING MINIMUM AND MAXIMUM SENTENCE.

SYLLABUS:

1. *Section 2210, General Code, relating to diminution of time for good behavior only affects the time within which the Board of Parole may parole a prisoner and does not affect either the minimum or maximum sentence and, therefore, if a prisoner has not served his maximum sentence and has not been paroled, he must be retained at the London Prison Farm even though he comes within the provisions of Section 2210 as to the allowance of time for good behavior.*

2. *A prisoner at the London Prison Farm has the same status as a prisoner at the Ohio Penitentiary in so far as his rights to parole and to the serving of a minimum and maximum sentence are concerned.*

COLUMBUS, OHIO, July 30, 1938.

Department of Public Welfare, State Office Building, Columbus, Ohio.

GENTLEMEN: I have your recent communication which reads as follows:

"A prisoner at the London Prison Farm has been continued to his maximum sentence by the Board of Parole. He advises me that he is entitled to 288 days of good time. Is he entitled to this diminution of his sentence or must he serve to the maximum as ordered by the Parole Board?"

The statutory provisions relating to what is colloquially known as "time off for good behavior" are found in Sections 2210 and 2163 of the General Code, the first of which reads as follows:

"A person confined in a state penal institution and not eligible to parole before the expiration of a minimum sentence or term of imprisonment, or hereafter sentenced thereto under a general sentence, who has faithfully observed the rules of said institution, shall be entitled to the following diminution of his minimum sentence:

(a) A prisoner sentenced for a minimum term of one year shall be allowed a deduction of five days from each of the twelve months of his minimum sentence.

(b) A prisoner sentenced for a minimum term of two years shall be allowed a deduction of six days from each of the twenty-four months of his minimum sentence.

(c) A prisoner sentenced for a minimum term of three years shall be allowed a deduction of eight days from each of the thirty-six months of his minimum sentence.

(d) A prisoner sentenced for a minimum term of four years shall be allowed a deduction of nine days for each of the forty-eight months of his minimum sentence.

(e) A prisoner sentenced for a minimum term of five years shall be allowed a deduction of ten days from each of the sixty months of his minimum sentence.

(f) A prisoner sentenced for a minimum term of six or more years, shall be allowed a deduction of eleven days from each of the months of his minimum sentence.

(g) A prisoner sentenced for a minimum of a number of months or fraction of years shall be allowed the same time per month as is provided for the year next higher than such minimum sentence.

At the expiration of the minimum sentence diminished as herein provided, each prisoner shall be eligible for parole as provided by law."

It was held in the case of *Ex Parte Tischler*, 127 O. S. 404, as is set forth in the first branch of the syllabus:

“Under Section 2210, General Code, credits allowed for good behavior reduce the time within which a prisoner is eligible for parole, and are not to be deducted from the minimum sentence so as to reduce the term of imprisonment.”

On the authority of this case, I have no hesitancy in concluding that the said Section 2210, *supra*, does not affect the amount of time to be served by a prisoner but only relates to the time within which a prisoner may be eligible for parole.

It was further held by the court in *Ex Parte Tischler*, *supra*, that the Board of Parole has the discretionary power to determine when a parole shall be granted and this power is not in any way affected by the expiration of the minimum term of imprisonment. It is, therefore, my opinion that Section 2210 does not relate to the period of imprisonment and that since the Board of Parole has not granted a parole to the person in question, you can not release him until the expiration of the maximum term of the sentence imposed in the particular case.

Section 2163, General Code, above referred to provides as follows:

“A person confined in the penitentiary, or hereafter sentenced thereto for a *definite term other than life*, having passed the entire period of his imprisonment without violation of the rules and discipline, except such as the board of managers shall excuse, will be entitled to the following diminution of his sentence:

(a) A prisoner sentenced for a term of one year shall be allowed a deduction of five days from each of the twelve months of his sentence.

(b) A prisoner sentenced for a term of two years shall be allowed a deduction of six days from each of the twenty-four months of his sentence.

(c) A prisoner sentenced for a term of three years shall be allowed a deduction of eight days from each of the thirty-six months of his sentence.

(d) A prisoner sentenced for a term of four years shall be allowed a deduction of nine days from each of the forty-eight months of his sentence.

(e) A prisoner sentenced for a term of five years shall be allowed a deduction of ten days from each of the sixty months of his sentence.

(f) A prisoner sentenced for a term of six or more years, shall be allowed a deduction of eleven days from each of the months of his full sentence.

(g) A prisoner sentenced for a number of months or fraction of years shall be allowed the same time per month as is provided for the year next higher than maximum sentence.” (Italics the writer’s.)

Your letter does not set forth the sentence of the prisoner under consideration, but inasmuch as you refer to the “maximum sentence”, I assume that the particular prisoner was given an indeterminate or general sentence under the provisions of Section 2166, General Code. If this assumption is correct, such Section 2163 does not apply to the person under consideration because such a prisoner does not come within the terms of such Section 2163 inasmuch as he was not “sentenced * * * for a definite term”. On this point, I would like to refer you to the case of *Reeves vs. Thomas*, 122 O. S. 22, wherein the court considered the applicability of Sections 2163 and 2166 and makes the following statement at page 25 :

“The effect of Section 2166 was to place all persons sentenced under this indeterminate sentence law under the jurisdiction of the Ohio board of administration (now board of clemency, Sections 91 and 92, General Code), and such persons so convicted and sentenced were not entitled to the benefits of the good time statute (Section 2163), which only applied to those sentenced for a definite term.”

Another statement appearing on page 26 here worthy of note is the following :

“It is apparent that the Legislature, in passing both Section 2163 and Section 2166, had in mind the reward of good conduct and observance of the rules and regulations of the penal institution to which the convict was sentenced: Section 2163 in cases of definite sentences, by an allowance for good time, and Section 2166 in indeterminate sentences, with the power placed in the board of clemency to reward good conduct, and thus work the discharge of the convict at an earlier date.”

Subsequently, in the case of *O’Neill vs. Thomas, Warden*, 123 O. S. 42, the Supreme Court affirmed the position taken in the *Reeves* case, *supra*, and held as is set forth in the syllabus :

“Section 2163, General Code, providing for diminution of sentence for good behavior, applicable to persons confined in the Ohio penitentiary for a definite term, does not apply to a prisoner

who has received a general sentence under the provisions of Section 2166, General Code, the board of clemency having power, under the statute, in that class of sentences, to reward good conduct and obedience to rules of the penitentiary."

In discussing the question of what constitutes a "definite term" within the meaning of Section 2163, the court at page 50 makes the following statement:

"Construing these statutes together, and cognate statutes, we think the clear intention of the Legislature appears to be that the expression 'definite term,' in Section 2163, is not to be construed as being synonymous with the indefinite terms provided for in Section 2166, and the maximum period referred to in the sentence is not to be regarded as the 'definite term' provided for in Section 2163."

In view of these unambiguous pronouncements by the Supreme Court of Ohio, there is no doubt but that Section 2163, General Code, only affects cases in which the prisoner was sentenced for a definite term.

It is true that the prisoner involved in the Ex Parte Tischler case, supra, was confined in the Ohio Penitentiary but I believe that a prisoner confined at the London Prison Farm is in exactly the same position and, therefore, I concur in the opinion of one of my predecessors reported in Opinions of the Attorney General for 1927, Volume II, page 1591, the first branch of the syllabus of which reads as follows:

"In contemplation of law inmates of London Prison Farm are inmates of the Ohio Penitentiary and it is immaterial whether they are paroled by the Ohio Board of Clemency from the London Prison Farm direct or transferred to the Ohio Penitentiary before being released on parole." (Italics the writer's.)

In other words, the London Prison Farm is, in my opinion, a "state penal institution" as that term is used in Section 2210, General Code.

In conclusion and to summarize, it is my opinion that: (1) Section 2210, General Code, relating to diminution of time for good behavior only affects the time within which the Board of Parole may parole a prisoner and does not affect either the minimum or maximum sentence and, therefore, if a prisoner has not served his maximum sentence and has not been paroled, he must be retained at the London Prison Farm even though he comes within the provisions of Section 2210 as to the allowance of time for good behavior; (2) A prisoner at the London

Prison Farm has the same status as a prisoner at the Ohio Penitentiary in so far as his rights to parole and to the serving of a minimum and maximum sentence are concerned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

2775.

APPROVAL—CANAL LAND LEASE, STATE OF OHIO, THROUGH SUPERINTENDENT OF PUBLIC WORKS, WITH THE HARDING-JONES PAPER COMPANY, EXCELLO, OHIO, TERM NINETY-NINE YEARS, ANNUAL RENTAL, \$24.00, RIGHT TO OCCUPY AND USE FOR MANUFACTURING AND GENERAL BUSINESS PURPOSES, DESCRIBED PORTION, ABANDONED MIAMI AND ERIE CANAL LANDS, MIDDLETOWN, BUTLER COUNTY, OHIO.

COLUMBUS, OHIO, July 29, 1938.

HON. CARL G. WAILL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain canal land lease in triplicate executed by the State of Ohio, acting through you as Superintendent of Public Works and as Director of said department, to The Harding-Jones Paper Company of Excello, Ohio. By this lease, which is one for a stated term of ninety-nine years, renewable forever, with a provision for revaluation of the property leased for rental purposes at the end of each fifteen-year period during the term of the lease, and which during the first fifteen-year period of the lease provides for an annual rental of \$24.00, there is leased and demised to the lessee above named the right to occupy and use for manufacturing and general business purposes a parcel of abandoned Miami and Erie Canal lands which is a part of a certain state lot situated in Section 31, Town 2, Range 4, between the Rivers Survey, and which is more particularly described as follows:

Beginning at a point in the northerly line of Section 31, Town 2, Range 4, in the original survey between the Miami Rivers, which is also in the northerly line of the lot purchased by the State of Ohio from Sam Houseworth by deed dated