valid exercise of the police power of the state and are not in conflict with the Constitution of the United States, either as depriving persons importing game of their property without due process of law, or as an interference with, or a regulation of, interstate commerce. *Geer* vs. *Connecticut,* 161 U. S. 519."

The purpose of the fish and game act was primarily to protect and preserve the wild game and fish of Ohio. To accomplish this result the Legislature limited the time during which wild animals could be caught or killed and also limited the number of wild animals that could be taken and possessed in any one day. To prevent the killing of these animals in large numbers, the sale and purchase of them were also prohibited. For this reason our Legislature has made it unlawful to have in possession during the closed season, or buy or sell, game killed in this or any other state. If it was permitted to bring game from another state into this state at any time and for every purpose, it would be almost impossible to prevent the destruction of our own game during such periods, because it would be difficult to identify the game of this state from the game taken in other states. However, to purchase and take squirrels outside of the State of Ohio, where it is lawful to do so, and bring them in and possess them alive as pets in the State of Ohio would not in any way defeat the purpose of this act.

Section 1400 of the General Code, supra, permits squirrels to be possessed alive at any time as pets if they are legally taken, and it seems to me that where squirrels are purchased or taken alive in another state where it is lawful to do so and brought into the State of Ohio to be possessed as pets, such purchase or taking is included in the term "legally taken," as required by Section 1400 of the General Code.

I am, therefore, of the opinion that squirrels lawfully purchased or taken outside of the State of Ohio and brought into Ohio may be possessed alive in enclosures at any time as pets.

Respectfully,
GILBERT BETTMAN,
Attorney General.

527.

PRISONER—CRABBE ACT VIOLATOR INCARCERATED IN CITY WORKHOUSE—PUBLIC SAFETY DIRECTOR MAY PAROLE AFTER NOTICE TO TRIAL JUDGE—SPECIFIC CHARTER PROVISIONS CONSIDERED.

SYLLABUS:

Upon notice to the trial judge, the director of public safety of the city whose charter provisions are under consideration may parole or release, according to law, a prisoner, under the provisions of Sections 4133, *et seq., General Code, who is incarcerated in the city workhouse for the non-payment of fine and costs by reason of the violation of the liquor laws.*

COLUMBUS, OHIO, June 17, 1929.

HON. RUPERT R. BEETHAM, *Prohibition Commissioner, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, requesting my opinion, in the following language:

"We have been troubled somewhat by pardons and releases of liquor law violators from the city prison.

One case in particular, that of J. B. S. who was arrested by this department and taken to the city prison where charges of selling and possessing property designed for the manufacture of intoxicating liquor were filed against him. Both of these charges were filed under the Crabbe Act.

This man was found guilty and fined one hundred dollars ($100.00) for selling and three hundred dollars ($300.00) for the possession of property designed. Upon failure to pay this fine he was incarcerated in the city workhouse. Fourteen (14) days later he was released from the workhouse on the written promise, made by him, that he would obey all laws. This pardon was granted by Municipal Judge H. and Chief of Police F., who was acting in the place of Safety Director M.

Is this procedure legal? Under what circumstances may a prisoner be released from the C. city workhouse after having been found guilty or pleaded guilty to a violation of the Crabbe Act?"

Your inquiry arises by reason of the provisions of Section 6212-17 of the General Code, which, in part, provides:

"No fine or part thereof imposed hereunder shall be remitted nor shall any sentence imposed hereunder be suspended in whole or in part thereof."

Since the enactment of said provision, the question of the power of authorities to parole prisoners sentenced to jails and workhouses for violation of the liquor laws has frequently been considered. In my Opinion No. 419 issued to the Bureau of Inspection and Supervision of Public Offices under date of May 22, 1929, it was held as disclosed by the syllabus that:

"The words 'remit' and 'suspend' as used in Section 6212-17, General Code, refer only to courts, and therefore Section 6212-17, does not affect the authority under Sections 4133, et seq., given to an officer authorized by statute to manage a workhouse, to release or parole prisoners confined therein for failure to pay fines and costs imposed for a violation of the Crabbe Act."

This opinion referred to an opinion of the Attorney General found in Opinions of the Attorney General for 1925, p. 186, wherein it was held that notwithstanding the provisions hereinbefore quoted of Section 6212-17, the county commissioners had power to release prisoners sentenced to county jails in counties not having a workhouse, under the provisions of Section 12382 of the General Code. Said opinion was rendered before said section last mentioned was amended expressly providing that the power of such release should exist notwithstanding the provisions of Section 6212-17 of the General Code. In other words, the amendment of said section in that respect was simply declaratory of what the law had already been stated to be by the Attorney General. Undoubtedly, controversies arising with reference to the same were responsible for the amendment. In other words, former opinions have clearly shown that the paroling of a prisoner from a jail or workhouse is not the suspension or remission of a fine. Courts exercise the power of remission and suspension and their powers in this respect, of course, by reason of this section, are ended in that character of cases.

However, under a parole, a prisoner is still in the custody of the law and subject to incarceration again without hearing or trial at the will of the pardoning authorities.

In Opinion No. 439 issued to Hon. Paul J. Wortman, Prosecuting Attorney of

Mortgomery County under date of June 8, 1929, it was stated in the second branch of the syllabus that:

> "County commissioners have no authority, under Section 12382 of the General Code, to release prisoners confined in a municipal workhouse where such persons are being maintained under a contract between the county commissioners and the director of public safety of such municipality. Under Sections 4133, et seq., General Code, such prisoners may be released or paroled by the officer authorized by statute to manage such workhouse."

Section 4134, General Code, provides:

> "Such officer also may establish rules and regulations under which, and specify the conditions on which, a prisoner may be allowed to go upon parole outside of the buildings and enclosures. While on parole such person shall remain in the legal custody and under the control of the officer, and subject at any time to be taken back within the enclosure of the institution. Full power to enforce the rules, regulations and conditions, and to retake and reimprison any convict so upon parole, is hereby conferred upon such officer, whose written order shall be sufficient warrant for all officers named therein to authorize them to return to actual custody any conditionally released or paroled prisoner. All such officers shall execute such order the same as ordinary criminal process."

Section 4135, General Code, authorizes, among other things, the return to the workhouse of any prisoner violating his parole.

Section 4136 provides:

> "Any prisoner at large upon parole who fails to return to the actual custody of the workhouse as specified as one of the conditions of his parole, or commits a fresh crime and is convicted thereof, shall be, on the order of the officer, treated as an escaped prisoner and subject to the penalties named in Section twelve thousand eight hundred and forty. But no parole shall be granted by any such officer without previous notice thereof to the trial judge."

In the section last quoted, it appears that no parole shall be granted without previous notice to the trial judge.

It is evident that the foregoing sections clearly authorize the paroling of a prisoner from a workhouse by the officer vested with authority by statute to manage such institution, as mentioned in Section 4133 of the General Code. It also is clear that the provisions of Section 6212-17, as heretofore pointed out, do not in any wise inhibit the exercise of such power.

In the case of *Boyer, Superintendent of Stark County Workhouse* vs. *State, ex rel.,* 118 O. S. 582, the Supreme Court held that a person convicted of a misdemeanor and sentenced to pay a fine and costs and to stand committed to the workhouse until such fine and costs shall be paid or the prisoner be otherwise discharged according to law, could not be discharged under the so-called insolvent debtors' act. However, it will be noted that the sections relating to workhouses expressly provide, in Section 4129, that persons committed to such institutions shall not be released under the law providing for the release of insolvent debtors. Furthermore, the Supreme Court in the decision above mentioned, in the syllabus, after holding that such prisoners could not be discharged under the insolvency laws, used the following language:

"Such prisoner might be otherwise discharged according to law,' by pardon, parole or credit upon said fine and costs, as provided by law, until the amount was so paid."

In the case under consideration by the Supreme Court, the prisoner had been confined for a violation of the liquor laws. While the court was not expressly considering the provisions of Section 6212-17, it is believed the expression above quoted from the syllabus of said opinion, in view of the facts under consideration, is indicative of the fact that the court's opinion with reference to the power of parole is in harmony with the holdings heretofore mentioned.

The foregoing has relation to the power of parole from a city workhouse. It will be observed that Section 4133 authorizes other releases in addition to parole, in the following language:

"An officer vested by statute with authority to manage a workhouse, may discharge, for good and sufficient cause, a person committed thereto. A record of all such discharges shall be kept and reported to the council, in the annual report of the officer, with a brief statement of the reasons therefor."

In view of the foregoing, the only question now presented is what authority, if any, in the city of C., in view of the charter adopted in pursuance of Section 7, Article 18 of the Ohio Constitution, is authorized to exercise the power of parole for persons incarcerated in the city workhouse. The charter of the city of C., as adopted in 1914, in Section 2 thereof, clearly indicated that it was the purpose of the adoption of said charter to exercise all powers granted under the Constitution or laws, whether specifically enumerated in the charter or otherwise. Section 101 of said charter, which relates to the powers and duties of the director of public safety, provides:

"Under the direction of the mayor, the director of public safety shall be the executive head of the divisions of police, fire, public welfare, building regulation and weights and measures. He shall have all powers and duties connected with and incident to the appointment, regulation and government of his department, except as otherwise provided by this charter. He shall keep a record of his proceedings."

It will be further observed that Section 4133, supra, expressly refers to "an officer vested by statute with authority to manage a workhouse," and Section 4368, General Code, places such power in the director of public safety. Therefore, it is clear that the provisions of the charter and statutes are in accord in this respect.

From the foregoing, it is clear that the power to manage a workhouse is in the department of public safety and the director of such department apparently is vested with full power to exercise any of the functions thereof. However, under the provisions of Section 112 of said charter, the superintendent of the division of public welfare is made the deputy of the director of public safety in such matters.

Therefore, in specific answer to your inquiry, you are advised that upon notice to the trial judge, the director of public safety may parole or release a prisoner, under the provisions of Section 4133, et seq., General Code, who is incarcerated in the city workhouse for the non-payment of fine and costs by reason of the violation of the liquor laws. I am further of the opinion that there is no authority for the chief of police of said city to exercise such power.

Respectfully,
GILBERT BETTMAN,
Attorney General.