

2764.

PRISONER—CONVICTED OF CRIME WHILE ON PAROLE—SENTENCE  
MAY RUN CONCURRENTLY WITH AND EXTEND BEYOND UN-  
EXPIRED FIRST SENTENCE.

SYLLABUS:

*Where a prisoner convicted of a crime while at large on parole is sentenced for a term of imprisonment which is to run concurrently with the unexpired term of his first sentence, such person may be incarcerated until the maximum term of the second sentence expires, even though such term of imprisonment is beyond the maximum term of the first sentence.*

COLUMBUS, OHIO, May 29, 1934.

HON. JOHN MCSWEENEY, *Director, Department of Public Welfare, Columbus, Ohio*

DEAR SIR:—This will acknowledge your request for my opinion which reads as follows:

“The Board of Parole has requested an opinion on the following question:

A paroled prisoner, having violated his parole by recommission of an offense against the law, was sentenced to a term of imprisonment prescribed by the statute, such sentence to be served ‘concurrently with the original sentence’ imposed.

The maximum of the term of the last sentence will expire later than will the maximum of the term of the original sentence.

Query:

Can the prisoner be incarcerated beyond the expiration of the maximum of the original sentence, or can he be incarcerated until the expiration of the maximum of his last sentence?”

It is a well established rule of criminal law in this state that where several sentences are imposed for separate and distinct offenses, the sentences run consecutively unless a contrary intention is expressed by the sentencing court. *Anderson vs. Brown*, 117 O. S. 393; Opinions of the Attorney General for 1932, pages 919, 1208; and Opinions of the Attorney General for 1933, page 69. There is no provision in the General Code of Ohio which prevents a trial court, in sentencing a person convicted of a crime, from imposing a term of imprisonment which shall run concurrently with another sentence. It is also fundamental in criminal law that where a prisoner during an unexpired term of imprisonment commits a crime, he may be punished therefor and sentenced to a term of imprisonment to commence at the expiration of the original term of imprisonment or to run concurrently with the original sentence. Sentences may run concurrently even though pronounced at different times and for different offenses. *Zerbst vs. Lyman*, 255 Fed. 609; see also 5 A. L. R. 377. However, under the rule of law announced in the case of *Anderson vs. Brown*,

*supra*, the sentencing court in Ohio must definitely state that the sentence or sentences are to be concurrent, if it is intended that the sentences should be served concurrently.

Terms of imprisonment that run concurrently do not lose their identity of being separate sentences. In *re Sichofsky*, 201 Calif. 360. The fact that sentences are to run concurrently merely means that the prisoner is given the privilege of serving each day a portion of each sentence.

The only practical effect of serving sentences concurrently is that the prisoner is discharged at the expiration of the maximum term of imprisonment imposed upon any one of the several sentences, providing the sentences are all for an equal period of imprisonment. If, however, the several sentences are for different terms of imprisonment, the prisoner cannot be discharged until he has served the longest sentence. *Fortson vs. Elbert County*, 43 S. E. 492 (Ga.); *Aderhold vs. McCarthy*, 65 Fed. (2d Ed.) 452; and *Nishimoto vs. Nagle*, 44 Fed. (2d Ed.) 304. The second paragraph of the headnotes of the latter case reads as follows:

"Where sentence upon separate counts in indictment is different, accused cannot be discharged until he has served longest sentence."

In view of the authorities cited, it is apparent that where a prisoner is serving several sentences which are for different periods of imprisonment and which run concurrently, the prisoner is not entitled to be released on the expiration of the shortest term but can be incarcerated until the expiration of the longest term.

It is therefore my opinion, specifically answering your inquiry, that where a prisoner convicted of a crime while at large on parole is sentenced for a term of imprisonment which is to run concurrently with the unexpired term of his first sentence, such person may be incarcerated until the maximum term of the second sentence expires, even though such term of imprisonment is beyond the maximum term of the first sentence.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

2765.

APPROVAL, NOTES OF BOARDMAN RURAL SCHOOL DISTRICT,  
MAHONING COUNTY, OHIO—\$23,500.00.

COLUMBUS, OHIO, May 29, 1934.

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