

1280.

REVIEW AND CORRECTION OF OPINION NO. 819, SUPRA.

SYLLABUS:

Opinion No. 819, dated August 2, 1927, Opinions, Attorney General, 1927, reviewed and corrected as herein provided.

COLUMBUS, OHIO, November 18, 1927.

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

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

"In your Opinion No. 819 to the Ohio Board of Clemency under date of August 2nd you held in part as follows:

'(2) If a prisoner of the Ohio State Reformatory commits a felony while upon parole and upon conviction thereof the court, being unaware of his previous sentence to a state prison, sentences such prisoner to the Ohio State Reformatory, by the terms of Section 2140, General Code, upon it being shown such prisoner had previously been convicted of crime the Ohio Board of Clemency, with the written consent of the Governor may transfer such prisoner to the Ohio penitentiary.

(4) By the terms of Section 2140, General Code, the Ohio Board of Clemency, with the written consent of the Governor, may transfer to the Ohio Penitentiary an apparently incorrigible prisoner whose presence in the reformatory appears to be seriously detrimental to the well-being of the institution.'

We respectfully request that these questions be reviewed as we do not see how the law governing the Ohio Board of Clemency can be construed to transfer to the Board of Clemency the authority given the Director of the Department of Public Welfare (formerly the Ohio Board of Administration) to make transfers of prisoners from the reformatory to the penitentiary.

In the law enumerating the duties of the Ohio Board of Clemency (Section 92 G. C.) that board is given authority in the release, parole and probation of persons confined in or under sentence to the penal or reformatory institutions, but so far as we can find no jurisdiction is given to the board in the transfer of inmates from one institution to another. In not only Section 2141, G. C., but in Section 1841-9, G. C., the Department of Public Welfare as successor to the Ohio Board of Administration is given the power of transferring inmates of state institutions. It would be altogether inconsistent and impracticable to place this power with the Ohio Board of Clemency. It is probable that a typographical error was made in that part of the opinion referring to the transfer of prisoners and that in this respect the opinion should read the 'Ohio Board of Administration (now the Department of Public Welfare)' instead of the 'Ohio Board of Clemency'."

Section 92, General Code, in so far as pertinent, provides:

"Upon the appointment of the members of the Ohio Board of Clemency as hereinbefore provided, and their qualification, such board shall supersede

and perform all of the duties now conferred by law upon the Ohio Board of Administration *with relation to the release, parole, and probation of persons confined in or under sentence to the penal or reformatory institutions of Ohio*; and thereafter the said Ohio Board of Clemency, shall be vested with and assume and exercise all powers and duties *in all matters connected with the release, parole or probation of persons confined in or under sentence to the penal institutions of Ohio*, now cast by law upon the said Ohio Board of Administration. * * * (Italics the writer's.)

It will be noted, as you state in your letter, *supra*, that the Ohio Board of Clemency supersedes the Ohio Board of Administration *only* with relation to the release, parole and probation of persons confined in or under sentence to the penal institutions of Ohio and that such board has no authority or jurisdiction in regard to the transfer of inmates from one of the several penal institutions to another.

Opinion No. 819, dated August 2, 1927, Opinions, Attorney General, 1927, is erroneous in so far as the language appearing therein purports to authorize the Ohio Board of Clemency, with the written consent of the Governor, to transfer inmates of the Ohio State Reformatory to the Ohio Penitentiary. The language which should have appeared therein is that such transfers can be made by the *Ohio Board of Administration (now the Director of Public Welfare)*.

I am forwarding a copy of this opinion to the Ohio Board of Clemency in order that Opinion No. 819, may be correctly construed. I thank you for calling this error to my attention.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1281.

BONDS FOR TOWNSHIP ROAD IMPROVEMENTS—SUBJECT TO TWO PER CENT LIMITATION AND MUST BE SUBMITTED TO VOTE OF ELECTORS—TOWNSHIP TRUSTEES MAY ISSUE NOTES IN ANTICIPATION OF TAXES WITHOUT VOTE OF ELECTORS.

SYLLABUS:

1. *Under the provisions of Section 2293-17, General Code, bonds issued by a township to pay the township's portion of the cost of improving a county road are subject to the two per cent limitation on the net indebtedness of the township, and no such bonds may be issued without first submitting the question of the issuance of such bonds to a vote of the electors of the township.*

2. *Township trustees may borrow money and issue notes in anticipation of the collection of current revenue or of special assessments or for emergency purposes under Sections 2293-4, 2293-24 and 2293-7, General Code, respectively, without submitting the question of issuing such notes to a vote of the electors of the township and without regard to the net indebtedness limitation set out in Section 2293-17, General Code.*

COLUMBUS, OHIO, November 18, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your communication dated November 16, 1927, requesting my opinion upon the following: