

Finally, you inquire as to whether the city school levy will be operative in the territory taken into the city school district both by annexation and transfer. I have no hesitancy in saying that any territory legally becoming a part of the city school district prior to any annual levy of taxes therein is subject to levy in exactly the same manner as any other part of the territory of such school district and hence the authority to levy two mills for expenses heretofore voted in the Dayton school district extends to and includes the levy upon property subsequently becoming a legal part of such district.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1381.

PAROLE—SECTION 2175, GENERAL CODE, APPLIES TO PRISONER
COMMITTING NEW CRIME—SPECIFIC CASE DISCUSSED.

SYLLABUS:

1. *When a prisoner sentenced to the Ohio penitentiary and transferred to the London prison farm, has been subsequently paroled and while upon parole commits a new crime and is resented to the Ohio penitentiary, the provisions of Section 2175, General Code, to the effect that he "shall serve a second sentence, to begin at the termination of his service under the first or former sentence, or the annulment thereof," apply.*
2. *Specific case construed.*

COLUMBUS, OHIO, December 16, 1927.

Ohio Board of Clemency, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter which reads as follows:

"Prisoner Harry Davis, No. 53,083, was committed to the Ohio penitentiary April 29, 1924, and was paroled August 26, 1925. While out on parole he committed another crime, was convicted and was brought to the Ohio penitentiary May 4, 1926.

This case was one of those which led to a difference of opinion between the board and the keepers of the two prisons, the Ohio penitentiary and the London prison farm, for the reason that he was given his parole from the London prison farm, but when resented was brought back to the Ohio penitentiary. The old board of clemency in an effort to clear the record marked him for a final release from the London prison farm on May 4, 1927.

Question—Was that action null and void, or is he entitled to continue on the new number, 55,606, in the Ohio penitentiary?

Remarks—We feel that we understand your opinion recently given as declaring such actions null and void, but to satisfy the officials of the Ohio penitentiary I am asking an opinion in this specific case."

In considering the question you present your attention is directed to a recent opinion of this department, being Opinion No. 905, dated August 23, 1927, Opinions, Attorney General for 1927, the syllabus of which reads:

"1. In contemplation of law inmates of the 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 retransferred to the Ohio penitentiary before being released on parole.

2. When a prisoner sentenced to the Ohio penitentiary and transferred to the London prison farm, has been subsequently paroled and while upon parole commits a new crime and is resented to the Ohio penitentiary, the provisions of Section 2175, General Code, to the effect that he 'shall serve a second sentence, to begin at the termination of his service under the first or former sentence, or the annulment thereof,' apply."

Section 2175, General Code, provides:

"A prisoner at large upon parole or conditional release committing a new crime, and resented to the penitentiary, shall serve a second sentence, to begin at the termination of his service under the first or former sentence, or the annulment thereof."

The second paragraph of Opinion No. 727, dated July 11, 1927, Opinions, Attorney General for 1927, reads as follows:

"2. The Ohio board of clemency is without lawful authority to 'annul' a sentence as that word is used in Section 2175, General Code."

The following language appears therein:

"* * * it is my opinion that Section 2175, supra, in no wise grants authority to the board of clemency to release a prisoner, who has been paroled and has been convicted and sentenced to the penitentiary for a new crime, from serving any part of his first sentence in order to allow him to begin serving the second sentence before the maximum term of the first sentence has been served. * * * As provided in Section 2175, General Code, the second sentence imposed for the new crime committed while on parole does not begin to run until the termination of his service under the first sentence or the annulment thereof by a court of competent jurisdiction or by a pardon properly granted."

Although Prisoner Harry Davis was an inmate of the London prison farm at the time of his parole, in contemplation of law, he was an inmate of the Ohio penitentiary. The second paragraph of the syllabus of Opinion No. 905, supra, specifically answers the question that you now present. In order that I may not be misunderstood, it is my opinion that prisoner Harry Davis is not entitled to be considered as serving under the second sentence as prisoner No. 55,606. The action taken by the former Ohio Board of Clemency was without authority of law and hence null and void.

Respectfully,
EDWARD C. TURNER,
Attorney General.