

elements concur: (a) They are publicly owned. (b) They are publicly operated. (c) They are used exclusively for public purposes.

2. A school bus owned and operated by a parochial school for its school purposes is not a publicly owned and operated motor vehicle used exclusively for public purposes, within the meaning of Section 6295, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

158.

APPROVAL, NOTES OF TWINSBURG TOWNSHIP RURAL SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—\$4,000.00

COLUMBUS, OHIO, February 20, 1933.

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

159.

APPROVAL, ARTICLES OF INCORPORATION OF THE MODERN LIFE INSURANCE COMPANY.

COLUMBUS, OHIO, February 21, 1933.

HON. GEORGE S. MYERS, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of the articles of incorporation of The Modern Life Insurance Company.

I find that the same are not inconsistent with the Constitution and laws of the United States and of this State, and I am therefore herewith returning them to you with my approval endorsed thereon.

Respectfully,

JOHN W. BRICKER,
Attorney General.

160.

PAROLE—PRISONER UNDER NAUGHT TO THIRTY YEAR SENTENCE
—ELIGIBLE FOR PAROLE UPON COMPLIANCE WITH SECTION
2211-8, G. C.

SYLLABUS:

A prisoner committed to the Ohio Penitentiary to serve a naught to thirty year sentence for the violation of a statute which does not fix a minimum term of im-

prisonment is eligible for parole at any time after his commitment to the Ohio Penitentiary, but such prisoner cannot be released from confinement on parole by the Board of Parole until the provisions of section 2211-8, General Code, have been met.

COLUMBUS, OHIO, February 21, 1933.

HON. JOHN McSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

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

“We respectfully request your opinion on the following question:

In sentences to the Ohio State Penitentiary of persons convicted of crime for which no minimum period is established in the statutory penalty, for instance, 0 to 30 for the crime of ‘False statement as to financial condition of bank’, when does the prisoner become eligible under the present law to a hearing for parole at any time after his commitment to the penitentiary provided he has been properly advertised for parole under the provisions of the law governing paroles?”

The sentence you have in mind evidently is for a violation of the provisions of section 710-172, General Code. The penalty for the violation thereof is imprisonment in the Ohio Penitentiary for not more than thirty years or a fine of not more than ten thousand dollars or both.

The question presented by your inquiry was passed upon in the Opinions of the Attorney General for 1927, page 1894, wherein it was held in the second paragraph of the syllabus that:

“A judgment of a court imposed upon one convicted of a violation of Section 710-172, General Code, which reads: ‘It is therefore considered and adjudged by the court that the defendant be imprisoned and confined in the Ohio Penitentiary at Columbus, Ohio, for not more than thirty years, and be kept at hard labor but without solitary confinement and to pay the costs of this prosecution in the amount of \$....., for which execution is awarded,’ fixes no minimum period of duration of sentence. A prisoner so sentenced is eligible for parole at any time after his commitment to the Ohio Penitentiary, provided such prisoner is recommended as worthy of such consideration by the warden and chaplain of the penitentiary and notice thereof is published in accordance with Section 2171, General Code.”

See also Opinions of the Attorney General for 1933, Opinion No. 76. The ruling of my predecessor has not been affected or altered by any of the changes made by the legislature in respect to the sentencing and paroling of prisoners since that opinion was rendered, except that the procedure to be followed when a prisoner is released from the Ohio Penitentiary on parole is as now provided by section 2211-8, General Code, and the then existing requirement, that a prisoner serving an indeterminate sentence under a statute which fixes no minimum term of imprisonment shall not be eligible for parole until recommended as worthy of such consideration by the warden and chaplain of the penitentiary, no longer exists due to the repeal of section 2171, General Code.

A prisoner serving a naught to thirty year sentence is eligible for parole at any time after his commitment to the Ohio Penitentiary; however, before such prisoner can be released on parole, the Board of Parole must comply with the provisions of section 2211-8, which reads as follows:

“At least three weeks before the board of parole grants any parole or recommends any pardon or commutation of sentence, notice of the pendency of such matter, setting forth the name of the person on whose behalf it is made, the crime of which he was convicted, the time of conviction, the term of sentence, shall be sent to the prosecuting attorney and the judge of the court of common pleas of the county in which the indictment against the offender was found; provided, however, that where there is more than one such judge, then the notice shall be sent to the presiding judge of the county. The said notice shall also be published once each week for two consecutive weeks in a newspaper published and of general circulation in said county. In case of an application for the pardon or commutation of sentence of a person sentenced to capital punishment, the governor may modify the requirements of such notification and publication if there is not sufficient time for the compliance therewith before the date fixed for the execution of sentence.”

It is apparent on a reading of section 2211-8 that the Board of Parole is required to give notice to the prosecuting attorney and the judge of the common pleas court of the county in which the prisoner was indicted and convicted, at least three weeks before the Board of Parole grants a parole or recommends the pardon or commutation of sentence of a prisoner in any of the penal institutions enumerated in section 2211-4, General Code. This is also true in respect to the notice which must be published once a week for two consecutive weeks. On the compliance with the provisions of section 2211-8, General Code, the Board of Parole may release at any time after his commitment to the Ohio Penitentiary a prisoner who is sentenced to serve a naught to thirty year sentence.

Specifically answering your inquiry, I am of the opinion that a prisoner committed to the Ohio Penitentiary to serve a naught to thirty year sentence for the violation of a statute which does not fix a minimum term of imprisonment is eligible for parole at any time after his commitment to the Ohio Penitentiary, but that such prisoner cannot be released from confinement on parole by the Board of Parole until the provisions of section 2211-8, General Code, have been met.

Respectfully,

JOHN W. BRICKER,

Attorney General.