"A pension is not payment for present services rendered or to be rendered. 'Pension' is defined as a periodical allowance for an individual on account of past services, or some meritorious work done by him. So it is apparent there is a difference between receiving both a pension and pay for present services and the receiving of pay for services rendered in two positions in the same municipality."

Therefore, answering your questions specifically, it is my opinion that:

1. An ex-policeman who is receiving a pension from a municipal police relief fund may be employed as a part time traffic officer in the police department and be paid compensation for such services.

2. The widow of an ex-policeman receiving a pension from the municipal police relief fund may be employed as a matron in the police department, and be paid for said services.

3. Whether or not in either of such cases such employment would defeat the right of the person so employed to continue to participate in the pension fund, would depend upon the rules and regulations governing such fund.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2544.

REFORMATORY—RULES OF OHIO PENITENTIARY FORBIDDING SALES TO PRISONERS NOT APPLICABLE TO REFORMATORY—REGULATIONS BY DIRECTOR.

SYLLABUS:

1. *Section 2198, General Code, has no application to officers and employes of the Ohio State Reformatory.*

2. *There is no section of the General Code, pertaining to the Ohio State Reformatory, which is similar to Section 2198, General Code.*

3. *The Director of Public Welfare, or the other proper officers in charge of a state institution, to which prisoners from the Ohio State Reformatory are employed, have power to make reasonable orders, rules and regulations prohibiting the employes of such institution from selling to or otherwise carrying on business transactions with such prisoners.*

COLUMBUS, OHIO, September 5, 1928.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of August 24th, 1928, in which you request my opinion upon the questions asked in a letter from one of your examiners, which letter you enclose and which reads as follows:

"The undersigned respectfully requests that the Department of Auditor of State ask an opinion of the Attorney General as to:

1st. Does Section 2198 of the state penal code apply also to Ohio State Reformatory, and if not, is there a similar section that does apply to that institution?

2nd. Where Ohio State Reformatory prisoners are employed in another state institution, is it legal for any officer or employe of such institution, to sell to or otherwise carry on business relations with the prisoners?"

On March 16, 1876 (73 v. 34), the Legislature passed an act entitled:

"An Act—To regulate and govern the Ohio Penitentiary, and to repeal certain acts therein named."

Section 33 thereof read as follows:

"No officer or employe of the state, or contractor, or employe of a contractor, shall make any gift or present to a convict, or receive any from a convict, or have any barter or dealings with a convict; and for every violation of this section the party engaged therein shall incur the same penalty as is prescribed in section thirty-two."

The penalty referred to, as contained in Section thirty-two, was:

"* * * For every violation of this section, the officer, agent or employe of the state engaged therein shall be dismissed from his office or service, and every contractor, or employe or agent of a contractor, engaged therein, shall be expelled from the penitentiary, and not again permitted within it as a contractor, agent or employe."

This section was codified in the Revised Statutes as Section 7412 and read as follows:

"No officer, contractor, or employe of a contractor, shall make any gift or present to, or receive any from, or have any barter or dealings with, a convict; and for every violation of this section, the party engaged therein shall incur the same penalty as is prescribed in the last section."

Section 33, supra, is now Section 2198, General Code, to which you refer in your first question, and, except for the changes made by the Codifying Commission in 1910 and adopted by the Legislature, has never been amended since its original enactment. Said section now reads:

"No officer or employe *of the penitentiary,* contractor or his employe, shall make a present to, receive a present from, or have barter or dealings with a convict. Every such violation shall be subject to the penalty prescribed in the next preceding section." (Italics the writer's.)

It will be observed that in the codification of 1910, the statute was made applicable only to an "officer or employe of the penitentiary." The rule of construction here to be applied is that stated in the first branch of the syllabus in the case of *The State of Ohio* vs. *Williams,* 104 O. S. 232, as follows:

"Although, where the general statutes of the state have undergone 'revision and consolidation' by codification, there is a presumption that the construction thereof should be the same as prior thereto, yet where the language of the revised section is plain and unambiguous, it is the duty of the court to give it the effect required by the plain and ordinary signification of the words used whatever may have been the language of the prior statute."

In the opinion, it was said as follows:

"* * * It is erroneous to treat the new statute as the act merely of the codifying commission. It was duly enacted by the General Assembly, and the provisions previously in force were repealed. The rule frequently announced and applied in numerous cases is that where the general statutes of the state are revised and consolidated there is a strong presumption that the same construction which the statute received before revision should be applied to the enactment in its revised form though the language may have been changed, and the same construction will prevail unless the language of the new act requires a change of construction to conform to the manifest intent of the Legislature. * * *

This, however, is a rule of construction to be employed where the language used is of doubtful import. The principle is well established, and is supported by this court in each of the cases above cited, that where the language is clear, plain and easily understood, the court is not warranted in inserting in a statute, and particularly a criminal statute a provision which would extend its scope and make it applicable to those not included within its terms. It is elementary that such a provision is always to be strictly construed.

'If a revision or code is plain and unambiguous it must be construed by itself and without resort to the original or prior acts which have been brought into it.' 2 Sutherland on Statutory Construction (2 ed.), Section 450.

Where there is no ambiguity, no construction by the court is required or justified. The provisions of prior acts may be resorted to for the purpose of clearing up, but never to create an ambiguity. There can be no question as to the meaning of the language used in Section 13190, General Code. It requires no interpretation, and reference to the original act only raises a doubt where otherwise none exists. * * *"

Moreover, it will be observed that the statutes with which we are here concerned are penal statutes and must be strictly construed and held to apply to only those clearly coming within their provision. As stated in 36 Cyc., 1183:

"It is a fundamental rule in the construction of statutes that penal statutes must be construed strictly. * * * But, if the acts alleged do not come clearly within the prohibition of the statute, its scope will not be extended to include other offenses than those which are clearly described and provided for; and if there is a fair doubt as to whether the act charged is embraced in the prohibition, that doubt is to be resolved in favor of the defendant. *In order to enforce a penalty against a person, he must be brought clearly within both the spirit and the letter of the statute;* * * * " (Italics the writer's.)

In view of the foregoing I have no hesitancy in concluding that the provisions of Section 2198, General Code, have no application to officers and employes of the Ohio State Reformatory; and I know of no section of the General Code, pertaining to the Ohio State Reformatory, which is similar to Section 2198, General Code.

In answer to your second question I know of no section of the General Code which would preclude or prohibit officers or employes of institutions other than the Ohio Penitentiary from carrying on business relations with prisoners of the Ohio State Reformatory, who may be temporarily employed in such institutions.

In this connection, however, I deem it proper to point out that the Director of Public Welfare, or the other proper officers in charge of a state institution, at which prisoners from the Ohio State Reformatory are employed, would be empowered to make reasonable orders, rules and regulations prohibiting the employes of the institution from selling to or otherwise carrying on business transactions with prisoners.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2545.

ELECTION—EMPLOYES IN CLASSIFIED CIVIL SERVICE MAY NOT HOLD OFFICE AS CLERK OF BOARD OF DEPUTY STATE SUPERVISORS OF ELECTIONS.

SYLLABUS:

A person holding an office or position in the classified civil service of the state, or of a county, city or city school district, may not at the same time hold the office of member or clerk of the board of deputy state supervisors and inspectors of elections, or board of deputy state supervisors of elections, as the case may be, without thereby violating the provisions of Section 486-23, *of the General Code.*

COLUMBUS, OHIO, September 5, 1928.

The State Civil Service Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge receipt of your communication of recent date in which you request my opinion upon a question therein stated. Your communication reads as follows:

> "We desire to respectfully request your opinion whether, in accordance with the provisions of Section 486-23 regarding political activity, a clerk or member of the Board of Elections may act in this capacity and at the same time retain his position in the classified service of the state, counties, cities or city school districts thereof."

By the term "Board of Elections" as used in your communication, you have reference of course to the board of deputy state supervisors and inspectors of elections, or the board of deputy state supervisors of elections in a county, as the case may be, depending upon whether such county contains a city where annual general registration of the electors is required by law, or contains two or more cities in which registration is required by law. In either event, the members of such board are appointed from the two dominant political parties upon the recommendation of the county executive committees of such respective political parties. In other words, the appointment of a member of such board depends upon the fact that he belongs to one of the two dominant political parties, and that he has been recommended for appointment by the county executive committee of the party to which he belongs. Sections 4789, 4790, 4804 and 4805, General Code. The clerk of the board of deputy state supervisors and inspectors of elections may be selected by the majority vote of the members of such board. If not so selected the clerk is appointed by the state supervisor and inspector of elections from the list of persons voted on by the members of the board.