

1431.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE COLUMBUS WIRE AND IRON WORKS COMPANY, OF COLUMBUS, OHIO, FOR CONSTRUCTION AND COMPLETION OF FIRE ESCAPE FOR AWL, HARRIS AND GREER COTTAGES, COLUMBUS STATE HOSPITAL, AT COST OF \$4,884.00—SURETY BOND EXECUTED BY THE UNITED STATES FIDELITY AND GUARANTY COMPANY.

COLUMBUS, OHIO, May 7, 1924.

HON. L. A. BOULAY, *Director, Department of Highways and Public Works, Columbus, Ohio.*

Dear Sir:—

You have submitted for my approval contract between the State of Ohio, acting by the Department of Highways and Public Works, and the Columbus Wire and Iron Works Company, of Columbus, Ohio. This contract covers the construction and completion of fire escapes for Awl, Harris and Greer cottages, Columbus State Hospital, and calls for an expenditure of \$4,884.00.

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the United States Fidelity and Guaranty Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, informal bids were taken and tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

C. C. CRABBE,
Attorney General.

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SENTENCE—WHEN PRISONER IS ELIGIBLE TO PAROLE—SECTIONS 2163 and 2166 G. C. CONSTRUED.

COLUMBUS, OHIO, May 7, 1924.

SYLLABUS:

A sentence of "not less than seven years", when such term is the maximum provided by law, is a general sentence as provided by section 2163.

A prisoner under a general sentence is eligible to parole when he has served the minimum term provided by statute.

A sentence for not less than seven years, which is the same as the maximum provided by law, is not for such a definite term as named in section 2163.

HON. P. E. THOMAS, *Warden Ohio Penitentiary, Columbus, Ohio.*

Dear Sir:—

I am in receipt of your recent communication as follows:

"How shall we enter on our records the term of a prisoner where the court fixes the minimum term to be the same as the maximum term prescribed by law? For instance, the court in sentencing a prisoner for larceny fixes the minimum term as 'not less than seven years'. As seven years is the maximum term prescribed by law for this crime, and as on the face of it this sentence allows no leeway between the minimum and maximum terms, the following questions arise:

1. Does such sentence conflict with the provision of Section 2166 General Code that 'Courts imposing sentences to the Ohio penitentiary * * * shall make them *general*'?

2. Is such sentence to be considered as one '*for a definite term*' as named in the last sentence of Section 2166?

3. If answer to Question 2 is affirmative, is the sentence for larceny to be entered here as a '*general*' one, with a minimum of one year and a maximum of seven years? If not, how should it be entered in order to conform with the requirement of Section 2166 that all sentences shall be *general*?

4. If answer to Question 2 is negative, when, if ever, is the prisoner eligible for parole?

5. If the minimum term fixed by the court in the above case stands, and the prisoner must serve seven years thereon (same as maximum) does this constitute such a '*definite term*' as is named in Section 2163, and thus entitle the prisoner to diminution of sentence for good behavior as named in that section?

As we have many cases here similar to the above, we would like a full and definite opinion on each of the above questions at an early date, in order that we may know how to handle these cases properly."

Section 2166, General Code, as amended in 109 O. L., p. 64, provides:

"Courts imposing sentences to the Ohio penitentiary for felonies, except treason, and murder in the first degree, shall make them general, but they shall fix, within the limits prescribed by law, a minimum period of duration of such sentences. All terms of imprisonment of persons in the Ohio penitentiary may be terminated by the Ohio board of administration, as authorized by this chapter, but no such terms shall exceed the maximum term provided by law for the felony of which the prisoner was convicted, nor be less than the minimum term fixed by the court for such felony. If a prisoner is sentenced for two or more separate felonies, his term of imprisonment may equal, but shall not exceed, the aggregate of the maximum terms of all the felonies for which he was sentenced and, for the purposes of this chapter he shall be held to be serving one continuous term of imprisonment. If through oversight or otherwise, a sentence to the Ohio penitentiary should be for a definite term, it shall not thereby become void, but the person so sentenced shall be subject to the liabilities of this chapter and receive the benefits thereof, as if he had not been sentenced in the manner required by this section."

Webster's Dictionary defines the word "*general*" as:

"Not restrained or limited to a precise or detailed import; lax in signification; as a loose and general expression."

It cannot be said that the sentence of the court, "not less than seven years," is limited to a precise import. As far as the sentence in itself is concerned, it is for not less than so many years and may be for more than the specified length of time.

By section 2166, *supra*, it is made mandatory that the court, when imposing sentences, except for certain crimes, fix a minimum period of duration of sentence as fixed within the limits prescribed by law.

While it is conceded that if a person is sentenced for not less than a certain term and another law fixes the maximum term which is coincident with the minimum term fixed by the court, such a term is definite, yet it is not made so by the sentence of the court, but by virtue of another law. It is evident that the legislature meant to place in the hands of the court the power to fix the minimum term of imprisonment. This is shown by the use of the words in section 2166, "all terms of imprisonment of persons in the Ohio penitentiary may be terminated by the Ohio board of administration, as authorized by this chapter, but no such term shall exceed the maximum term provided by law for the felony of which the prisoner was convicted, nor be less than the minimum term *fixed by the court for such felony*."

It is therefore my opinion that a sentence of "not less than seven years", when such term is the maximum permitted by law, is a general sentence within the contemplation of section 2166 G. C.

The answer to your first question makes unnecessary any answer to your second and third questions.

Your fourth question is, when is such prisoner eligible for parole?

Section 2160 G. C. provides:

"The board of managers shall provide for the conditional or absolute release of prisoners under a general sentence of imprisonment, and their arrest and return to custody within the penitentiary. A prisoner shall not be released, conditionally or absolutely, unless, in the judgment of the managers, there are reasonable grounds to believe that his release is not incompatible with the welfare of society. A petition or application for the release of a prisoner shall not be entertained by the board. A prisoner under general sentence to the penitentiary shall not be released therefrom until he has served the minimum term provided by law for the crime of which he has been convicted; and he shall not be kept in the penitentiary beyond the maximum term provided by law for such offense."

Sections 2169 and 2170 General Code, as far as pertinent, provide:

"Sec. 2169. The Ohio Board of Administration shall establish rules and regulations by which a prisoner ***, having served a minimum term provided by law for the crime for which he was convicted,*** may be allowed to go upon parole outside the building and inclosure of the penitentiary, *** The board may designate geographical limits within and without the state, to which a paroled prisoner may be confined or may at any time enlarge or reduce such limits, by unanimous vote."

"Sec. 2170. All prisoners on parole shall remain in the legal custody and under control of the board of managers and subject to be taken back within the inclosure of the penitentiary.*** "

In answer to your fourth question, you are advised that a person under gen-

eral sentence is eligible to parole when he has served the minimum term provided by statute.

Your fifth question is whether a sentence in which the minimum fixed by the court is the maximum is such a "definite term" as would entitle the prisoner to privileges of section 2163.

Section 2163, as far as pertinent, provides:

"A person confined in the penitentiary, or hereafter sentenced thereto for a definite term other than life, having passed the entire period of his imprisonment without violation of the rules and discipline, except such as the board of managers shall excuse, shall be entitled to the following diminution of his sentence.***"

It will be noted that the section uses the words "sentenced thereto for a definite term", and as I have advised in the answer to your first question that such a sentence is not a definite sentence, section 2163, General Code, would not apply.

Respectfully,
C. C. CRABBE,
Attorney General.

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APPROVAL, BONDS OF CANAAN TOWNSHIP RURAL SCHOOL DISTRICT, MADISON COUNTY, \$4,957.67, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, May 7, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

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APPROVAL, BONDS OF MORROW COUNTY, \$63,000.00, TO IMPROVE MT. GILEAD-MT. VERNON ROAD, I. C. H. NO. 333-SECTION "G".

COLUMBUS, OHIO, May 7, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

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APPROVAL, BONDS OF UNION COUNTY, \$66,400.00, ROAD IMPROVEMENTS.

COLUMBUS, OHIO, May 7, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.