

485.

OHIO BOARD OF CLEMENCY—MAY PRESCRIBE A FORM FOR NOTICE OF PAROLE BY PUBLICATION—USE OF FORM NOT MANDATORY—OHIO REFORMATORY FOR WOMEN NOT REQUIRED TO PUBLISH NOTICE.

SYLLABUS:

1. Under Section 2148-10, General Code, relating to the parole of prisoners confined in the Ohio Reformatory for Women, there is no provision requiring publication of notice of recommendation by the superintendent of the reformatory that a prisoner is worthy of consideration for parole, before consideration of an application for parole by the Ohio Board of Clemency; and the Ohio Board of Clemency is without authority to make rules and regulations requiring the publication of such a notice.

2. As an incident to the general powers and duties conferred by law upon the Ohio Board of Clemency and for the purpose of enabling it efficiently and economically to perform the functions devolving upon it, such board may prescribe a form to be followed when notice by publication is given that a prisoner confined in the Ohio State Reformatory, the Ohio Penitentiary or the London Prison Farm has been recommended as worthy of consideration for parole, as respectively prescribed in Sections 2141 and 2142, and Section 2171, General Code. Failure to use this form, however, would not justify the Ohio Board of Clemency in refusing to consider the eligibility of such a prisoner for parole, provided notice is published in accordance with the terms of Sections 2142 and 2171, *supra*.

3. Form of notice of recommendation for parole approved.

COLUMBUS, OHIO, May 13, 1927.

Ohio Board of Clemency, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your letter of April 15th, 1927, which reads as follows:

"In re: Form to be used in advertising state prisoners as 'worthy of consideration' for parole.

A law was enacted April 17, 1891, providing that no prisoner 'shall be considered eligible' for a parole, 'until such prisoner is recommended as worthy of such consideration by the warden and chaplain of the penitentiary; and before consideration by the Board of Managers, notice of such recommendation shall be published for three successive weeks in two papers of opposite politics, etc.'

There has been a division of this original section into three sections, viz. 2, 171-2, 172 and 2, 173, and a few verbal changes have been made, but the provisions quoted, including the name 'Board of Managers' have been retained in the present law, Section 2171.

The old Board of Managers prescribed the form of notice to be published as per act passed April 17, 1891, (see Annual Reports of Board of Managers 1897-1900 in Capitol Library) and that form was used for many years, viz.:

'Notice is hereby given that _____, a prisoner now confined in the Ohio Penitentiary, has been recommended to the board by the warden and chaplain as worthy of consideration for parole. Said application will be for hearing on and after _____ 190____.'

The Board of Managers was eventually superseded by the Board of

Administration and in 1917, the Board of Clemency was created, and it superseded the Board of Administration in all matters relating 'to the release, parole and probation' of prisoners as per Section 92.

There are now four prisons instead of one as in 1891, and the provisions as to the advertising of prisoners may now be found in Section 2171 for the Ohio penitentiary, in Section 1835-1 for the London Prison Farm, in Section 2142 for the Ohio State Reformatory, and in Section 2148-10 for the Ohio Reformatory for Women.

During the years, with the transition of authority from Board to Board, this matter of advertising has been overlooked, and different forms have been used by the institutional heads of the four prisons upon their initiative, leading to conflict of opinions between them and the Board of Clemency, which holds that the form used should be similar to that required formerly by the Board of Managers. In order to promote harmonious and uniform action the following questions are submitted:

Has the Board of Clemency the power and the duty to prescribe a uniform form of advertising for all of the four institutions?

Will the form quoted above, a copy of which is enclosed herewith, comply with the provisions of Section 2171, etc., if made applicable to each prison?"

Section 86, General Code, recreates the Ohio Board of Clemency and provides for the appointment of its members, their qualifications and term of office, etc. Section 92, General Code, provides in part as follows:

"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. * * * "

By virtue of the provisions of this section the Ohio Board of Clemency supersedes the Ohio Board of Administration and is directed to perform all the duties heretofore conferred by law upon the Ohio Board of Administration with reference to the release, parole and probation of persons confined in or under sentence to the penal or reformatory institutions of Ohio.

A former opinion of this office which appears in Vol. II, Opinions of the Attorney General for 1917, page 1696, interprets Section 92, supra, in respect to the institutions over which it has jurisdiction. The syllabus of this opinion reads:

"The Ohio board of clemency has no jurisdiction over the correctional institutions of this state, namely, the Boys' Industrial School and the Girls' Industrial Home, their jurisdiction being limited to the penal institutions, namely, the Ohio state reformatory, the Ohio reformatory for women and the Ohio penitentiary."

Since the date of this opinion the legislature on March 27, 1915, passed an act (110 O. L. 108), which now appears as Section 1835-1, General Code, and provides:

"The London prison farm shall be used for the better class of prisoners and devoted to the reformation and the industrial and vocational training of this class. Such prisoners shall be transferred from the Ohio penitentiary upon the order of the director of public welfare. Such transfers shall be made upon the recommendation of the warden of the Ohio penitentiary and the board of clemency. The superintendent of the London prison farm shall be vested with the same authority and be governed by the same laws as now govern the warden of the Ohio penitentiary."

The procedure incident to the release, parole and probation of the inmates of the various institutions over which the Ohio Board of Clemency has jurisdiction, is provided by statute and the following sections of the General Code are pertinent thereto.

In so far as the parole of inmates of the Ohio Reformatory for Women is concerned, Section 2148-10, General Code, provides in part as follows:

"The Ohio board of administration shall establish rules and regulations under which persons in the Ohio reformatory for women may be allowed to go upon parole in legal custody, under the control of the board and subject to be taken back into the inclosure of the reformatory. A person shall not be eligible to parole and an application for such parole shall not be considered by the board until such prisoner has been recommended as worthy of such consideration by the superintendent of the reformatory, provided, that no female sentenced to imprisonment for life shall be eligible to parole within five years from admission. * * * *"

Similar provisions applying to inmates of the Ohio State Reformatory are found in Sections 2141 and 2142, General Code, which provide:

"Sec. 2141. The Ohio board of administration shall establish rules and regulations under which prisoners may be allowed to go upon parole in legal custody, under the control of the Ohio board of administration and subject to be taken back into the enclosure of the reformatory. A prisoner shall not be eligible to parole, and an application for parole shall not be considered by the board, until such prisoner has been recommended as worthy of such consideration by the superintendent and chaplain of the reformatory."

"Sec. 2142. Before consideration by the Ohio board of administration notice of such recommendation shall be published for three consecutive weeks in two newspapers of opposite politics in the county from which the prisoner is sentenced, or in the county of the residence of the prisoner. The expense of such publications shall not exceed one dollar for each paper. * * * *"

As regards the Ohio Penitentiary Section 2171, General Code, provides:

"A prisoner confined in the penitentiary shall not be eligible to parole, and an application for parole shall not be considered by the board of managers until such prisoner is recommended as worthy of such consideration by the warden and chaplain of the penitentiary. Before consideration by such board, notice of such recommendation shall be published for three consecutive weeks in two newspapers of opposite politics in the county from which such prisoner was sentenced. The expense of such publication shall not exceed one dollar for each paper."

As provided in Section 2141, supra, a prisoner shall not be eligible to parole from the Ohio State Reformatory, and an application for parole shall not be considered by the Ohio Board of Clemency, until such prisoner has been recommended as worthy of such consideration by the superintendent and chaplain of the reformatory. And Section 2142, supra, provides that before consideration by the Ohio Board of Clemency may be given such application, notice of such recommendation shall be published for three consecutive weeks in two newspapers of opposite politics in the county from which such prisoner was sentenced or in the county of his residence.

As provided in Section 2171, supra, a prisoner confined in the penitentiary shall not be eligible to parole, and an application for parole shall not be considered by the Ohio Board of Clemency, until such prisoner is recommended as worthy of such consideration by the warden and chaplain of the penitentiary. Before consideration by the Ohio Board of Clemency may be given such application, notice of such recommendation shall be published for three consecutive weeks in two newspapers of opposite politics in the county from which such prisoner was sentenced.

Section 1835-1, supra, makes provisions whereby the better class of prisoners of the Ohio Penitentiary may be transferred to the London Prison Farm, and as regards the parole of inmates of such institution the provisions of Section 2171, supra, govern and apply.

In so far as the Ohio Penitentiary, the London Prison Farm and the Ohio State Reformatory are concerned, provision is thus expressly made by these sections of the General Code above quoted requiring a publication of notice of the recommendation that an applicant for parole is worthy of consideration.

It was the intent of the legislature and it is so expressed in Section 92, supra, that the Ohio Board of Clemency should 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 theretofore cast by law upon the Ohio Board of Administration. As a condition precedent to the consideration of an application for parole of an inmate of the Ohio State Reformatory, the London Prison Farm or the Ohio Penitentiary, the statutes provide that there shall be a publication of the notice of recommendation for such consideration.

An examination of Section 2148-10, supra, discloses that the only restrictions or limitations upon the consideration by the Ohio Board of Clemency of an application for parole by an inmate of the Ohio Reformatory for Women are that such prisoner must have been "recommended as worthy of such consideration by the superintendent of the reformatory" and "that no female sentenced to imprisonment for life shall be eligible for parole within five years from admission." No where is there any requirement, as in the case of inmates in the Ohio Penitentiary and the Ohio State Reformatory, that notice of such recommendation shall be published.

Section 3148-10, supra, relating to the Ohio Reformatory for Women was enacted on April 6, 1915, (106 O. L. 130) and subsequent to the enactment of Section 2171, supra, relating to the Ohio Penitentiary, enacted April 17, 1891, (88 O. L. 310), and Sections 2141 and 2142, supra, relating to the Ohio State Reformatory, enacted April 28, 1913, (103 O. L. 864).

All statutes are presumed to have been enacted by the legislature with full knowledge of the existing condition of the law and with reference to it. 36 Cyc. 1146. It must be said, therefore, that when enacting the provisions relative to parole from the Ohio Reformatory for Women the legislature was fully cognizant of the provisions of Sections 2141, 2142 and 2171, with reference to publication of the notice of the recommendation to parole and intentionally omitted such a pro-

vision from Section 2148-10, in so far as the parole of women from the Ohio Reformatory for Women is concerned. This may have been done for two reasons; first, because female misdemeanants are confined in the reformatory for women, while only male felons are sent to the Ohio State Reformatory and the Ohio Penitentiary, and second, it may be that the legislature did not desire to require female prisoners to be subjected to the indignity of publishing in the newspapers the fact of their confinement and application for parole. In any event it is clear that in the case of female prisoners confined in the Ohio Reformatory for Women the law requires no publication of notice of recommendation as worthy for parole.

It might be argued that by virtue of the provisions of the first sentence of Section 2148-10, wherein the board is authorized and directed to "establish rules and regulations under which persons in the Ohio Reformatory for Women may be allowed to go upon parole," such board is authorized to prescribe rules and regulations requiring the publication of such a notice. The fallacy of such an argument is at once apparent when it is considered that by making specific provisions for such notice and a publication thereof in the other sections the legislature clearly indicated that a rule and regulation requiring the publication of such a notice was not of the nature embraced within the general language authorizing the board to establish rules and regulations under which prisoners might be allowed to go upon parole. As stated in 36 Cyc. 1142:

"A construction of a statute by the legislature as indicated by the language of subsequent enactments, is entitled to great weight * * *."

I am also impressed by the thought that having expressly and specifically provided for the publication of the notice in the case of the Ohio Penitentiary and Ohio State Reformatory the failure to provide for such a notice in the case of a prisoner in the Reformatory for women, is significant.

I find no statute expressly conferring upon the Ohio Board of Clemency power to prescribe a form of notice of recommendation for parole to be published where application for parole is made for or on behalf of a prisoner in the Ohio State Reformatory, Ohio Penitentiary or London Prison Farm, and any such authority must be inferred from the statutes creating the Clemency Board and fixing its duties. For the purpose of enabling a board of this character promptly and efficiently to perform the duties devolving upon it and carry out the functions for which it was created, the power to make reasonable administrative rules and regulations is inferable from the general grant of powers and duties. It follows that for the purpose of enabling the Clemency Board to expedite the work it is called upon to do and in the interest of administrative efficiency and economy the board may prescribe a form of notice to be used where inmates of the Ohio State Reformatory, Ohio Penitentiary or London Prison Farm have been recommended as worthy of consideration for parole. However, this form would not be exclusive, and any form which complies with the terms of the statutes would be sufficient to justify action on the application by the Clemency Board.

From what has been said I reach the following conclusions which specifically answer your inquiries.

1. Under Section 2148-10, General Code, relating to the parole of prisoners confined in the Ohio Reformatory for Women, there is no provision requiring publication of notice of recommendation by the superintendent of the reformatory that a prisoner is worthy of consideration for parole, before consideration of an application for parole by the Ohio Board of Clemency; and the Ohio Board of Clemency is without authority to make rules and regulations requiring the publication of such notice.

2. As an incident to the general powers and duties conferred by law upon the Ohio Board of Clemency and for the purpose of enabling it efficiently and economically to perform the functions devolving upon it, such board may prescribe a form to be followed when notice by publication is given that a prisoner confined in the Ohio State Reformatory, the Ohio Penitentiary or the London Prison Farm has been recommended as worthy of consideration for parole, as respectively prescribed in Sections 2141 and 2142, and Section 2171, General Code. Failure to use this form, however, would not justify the Ohio Board of Clemency in refusing to consider the eligibility of such a prisoner for parole, provided notice is published in accordance with the terms of Sections 2142 and 2171, *supra*.

In answer to your question with reference to the form of notice enclosed, which form is also quoted in your letter, it is my opinion that such form with the necessary changes in wording to make such notice apposite to the institutions and officials thereof involved, is legally sufficient.

Respectfully,
EDWARD C. TURNER,
Attorney General.

486.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN LAWRENCE, MEIGS,
PREBLE AND SCIOTO COUNTIES.

COLUMBUS, OHIO, May 13, 1927.

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

487.

APPROVAL, BONDS OF VILLAGE OF WESTON, WOOD COUNTY, OHIO,
\$4,700.00.

COLUMBUS, OHIO, May 13, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

488.

APPROVAL, BONDS OF CITY OF IRONTON, LAWRENCE COUNTY,
\$36,925.00.

COLUMBUS, OHIO, May 13, 1927.

Industrial Commission of Ohio, Columbus, Ohio.