OPINIONS

OF THE

ATTORNEY GENERAL

OF

OHIO

FOR THE

PERIOD FROM JANUARY 1, 1943 TO DECEMBER 31, 1943

> Pages 1-976 Index 771-976 Opinions 5753-6574

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ATTORNEYS GENERAL OF OHIO

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EDWARD C. TURNER	1927 - 1929
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HERBERT S. DUFFY	
THOMAS J. HERBERT	1939 -

THE STAFF OF THE OFFICE OF THE ATTORNEY GENERAL

1943

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Dale Dunifon Resigned June 15, 1943				
E. G. Schuessler Appointed June 16, 1943.	Chief	Counsel	-	
Appointed June 16, 1943.	.First	Assistant	Attorney	General
Perry L. Graham Appointed June 16, 1943.	.Chief	Counsel		
Harold M. Baron*Resigned March 21, 1943		ant Attor	ney Gener	al
William T. Burgess	• "	"'	"	
Tina G. Buzney		**	**	
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Allyn D. Kendis		"	**	
Alfred Lawrence Appointed March 16, 1943	3. "	"	**	
*Resigned Sept. 25, 1943		"	"	
John E. Miller	•		"	
Robert J. Odell	•	••		
Charles F. Ohl	• "		"	
Benjamin M. Patterson	•		"	
Robert Scheck*Resigned Dec. 15, 1943	•		"	
Maurice L. Schellenger	•			
George W. Sepessy		"	"	
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* Entered Armed Forces of United States

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- 3. "Foster home"—Family home where child reared as own child—Relationship existing between family and child or children, properly described as in loco parentis.
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- 2. Defense, Ohio State Council of-No authority to appoint auxiliary police with power of law enforcement-Such officers appointed by sheriff with approval of common pleas court judge, by mayor or director of public safety for cities, by village mayor in village.

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- 3. Minor male—Even though emancipated, cannot acquire legal settlement at place other than that of parents—Proviso, unless changed by legal action.
- 4. Minor-May not acquire legal settlement other than that of parents-Exception-By marraige or court decree placing duty of support upon some other person, i. e., adoption, divorce decree-Legal settlement of wife-Remains that of husband unless changed by death or divorce.
- 5. Minor—Age of majority—Possesses legal settlement of parents—Continues until new legal settlement established at different place where he supported himself without relief for one year or more.
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- 2. Cuyahoga County Child Welfare Board—Custodian, minor child—Duty to send child to public, private or parochial school—Exceptions.
- 3. "Foster home"—Family home where child reared as own child—Relationship existing between family and child or children, properly described as in loco parentis.
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- 2. Teacher qualified for continuing contract under Teachers' Tenure Law-Where benefit denied by board of education, and contract later granted, teacher entitled to be paid amount he would have earned under such contract, less amounts he may have earned, or could have earned during period contract wrongfully withheld, unless nature of his acts estopped him from asserting such claim.
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- 2. Teacher qualified for continuing contract under Teachers' Tenure Law-Where benefit denied by board of education, and contract later granted, teacher entitled to be paid amount he would have earned under such contract, less amounts he may have earned, or could have earned during period contract wrongfully withheld, unless nature of his acts estopped him from asserting such claim.
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- 1. Prior to its enactment, where applicant appeared for examination—Certificate to practice osteopathy and surgery—Paid examination fee—Failed to obtain passing mark in examination—Such applicant may not now take examination in subjects prescribed by former section 1288 G. C. and be licensed to practice.
- 2. Where applicant had preliminary educational requirements for admittance to examination—Failed examination—Status—Sections 1270, 1273 G. C.
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- 2. Teacher qualified for continuing contract under Teachers' Tenure Law-Where benefit denied by board of education, and contract later granted, teacher entitled to be paid amount he would have earned under such contract, less amounts he may have earned, or could have earned during period contract wrongfully withheld, unless nature of his acts estopped him from asserting such claim.
- 3. Conduct of teacher failing to enforce his rights to continuing contract-Damages by reason of wrongful withholding of contract-Laches-Estopped from asserting rights-In each case, particular facts and circumstances question for decision of chancery court.....

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- 2. Teacher-Three years' teaching record in pursuance of contract or from year to year-Continuing contract-Where superintendent of schools recommends continuing contract, duty of district board of education to tender contract-Board may by three-fourths vote of full membership reject such recommendation

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- 2. Cuyahoga County Child Welfare Board--Custodian, minor child-Duty to send child to public, private or parochial school-Exceptions.
 - 3. "Foster home"—Family home where child reared as own child—Relationship existing between family and child or children, properly described as in loco parentis.
 - 4. "Boarding home"—Private home other than foster home or boarding house —Children placed for care and treatment—Board paid to keepers of such home

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- 2. Director of Education—School funds—To compute average daily attendance should include only attendance of resident pupils and non-resident pupils. where valid tuition agreements exist with district of residence, parents, guardians or other persons in loco parentis.
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- 2. Teacher qualified for continuing contract under Teachers' Tenure Law— Where benefit denied by board of education, and contract later granted, teacher entitled to be paid amount he would have earned under such contract, less amounts he may have earned, or could have earned during period contract wrongfully withheld, unless nature of his acts estopped him from asserting such claim.

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- 2. Cuyahoga County Child Welfare Board—Custodian, minor child—Duty to send child to public, private or parochial school—Exceptions.
- 3. "Foster home"—Family home where child reared as own child—Relationship existing between family and child or children, properly described as in loco parentis.
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- Child, minor-Legal school resident-Cleveland City School District-Committed by Juvenile Court of Cuyahoga County to custody of Cuyahoga County Child Welfare Board-Placed in licensed boarding home-School district, not Cleveland City School District-Board of Education, Cleveland City School District obligated to bear expense, child's education, if child attends public school.
- 2. Cuyahoga County Child Welfare Board-Custodian, minor child-Duty to send child to public, private or parochial school-Exceptions.
- "Foster home"—Family home where child reared as own child—Relationship existing between family and child or children, properly described as in loco parentis.
- 4. "Boarding home"—Private home other than foster home or boarding house —Children placed for care and treatment—Board paid to keepers of such home

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- 1. Teachers in public schools—Exempted village school district—Three year limited contracts made in 1941—Contracts authorized and legal—Proviso —Certification and legal requirements as to recommendation of superintendent of schools were met.
- 2. Teacher—Three years' teaching record in pursuance of contract or from year to year—Continuing contract—Where superintendent of schools recommends continuing contract, duty of district board of education to tender contract—Board may by three-fourths vote of full membership reject such recommendation

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- 2. Cuyahoga County Child Welfare Board-Custodian, minor child-Duty to send child to public, private or parochial school-Exceptions.
- 3. "Foster home"—Family home where child reared as own child—Relationship existing between family and child or children, properly described as in loco parentis.
- 4. "Boarding home"—Private home other than foster home or boarding house—Children placed for care and treatment—Board paid to keepers of such home.....

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- 1. Transfer, school territory within rural or village school district of county school district to contiguous county school district—Petition filed with county board of education—75% qualified electors signed—Where no action taken by board of education, such board prior to holding centralization election may, but is not required to transfer territory to county school district—Section 4696 G. C.
- 2. Resolution for centralization of schools of district—Election—New district —Petition signed by 66-2/3% qualified electors—Powers and limitations, county board of education—Section 4736 G. C.....

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- 3. "Foster home"-Family home where child reared as own child-Relationship existing between family and child or children, properly described as in loco parentis.
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- 3. Plumbing installation, county court house or jail—County commissioners must pay fee for permits—Duly licensed plumber.
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- Lands certified delinquent, published prior to August 11, 1943 should not be submitted to county board of revision for forfeiture, nor to prosecuting attorney for foreclosure proceedings until expiration of three years after certification provided for in section 5704—Sections 5718, 5718-1 G. C.

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- 3. Where such purchases used for construction, maintenance and reconstruction of highways, purchase price may be paid from road fund created by reason of levy of taxes on taxable property of township—May not be paid from proceeds of liquid fuel tax distributed under authority of section 5541-8 G. C.

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- 1. Misdemeanor, prosecution for-Can be commenced in common pleas court by filing affidavit only when especially provided by statute.
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- 5. City of Cleveland-Tax levies-Uniform Tax and Budgetary Law-Annual general appropriation made by council-Article XII, section 2, Constitution of Ohio, sections 5625-1 to 5625-39 G. C.
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- 5. Minor—Age of majority—Possesses legal settlement of parents—Continues until new legal settlement established at different place where he supported himself without relief for one year or more.
- 6. Wife married to husband in armed forces—Legal settlement, last legal settlement of her husband until he establishes new legal settlement or until marital relationship terminated

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- 3. Auxiliary police when appointed or authorized by municipalities or sheriff have power of law enforcement.....
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- 2. May not pay from operating revenues or profits of transit system into general fund of city, stipulated sum for general services of council, mayor or other governmental agencies or departments of city—May transfer such profits to general fund—Section 5625-13 et seq., G. C.
- 3. Authority of officials who operate municipal transit system to make purchases and incur expenses—Opinions Attorney General 1942 page 773 approved and followed.
- 4. Funds subject to provisions of Uniform Depositary Act—Section 2296-1 et seq., G. C.—Exception—Charter—Special provisions as to deposit of public moneys.
- 5. City of Cleveland—Tax levies—Uniform Tax and Budgetry Law—Annual general appropriation made by council—Article XII, section 2, Constitution of Ohio, sections 5625-1 to 5625-39 G. C.
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- 2. Penalty for rape with consent—Imprisonment, one to twenty years in penitentiary or six months in county jail or workhouse—Penalty applies whether offense committed upon daughter or sister of guilty party or female unrelated to offender—Section 12414 G. C.—Person sentenced to penitentiary for such offense, eligible for parole, expiration of one year, subject to requirements, section 2209-17 G. C. as to notice of intended parole.
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- 1. Municipality—Owns and operates transit system—May pay to any other administrative department of city full value for any service or material furnished—Part of operating expense.
- 2. May not pay from operating revenues or profits of transit system into general fund of city, stipulated sum for general services of council, mayor or other governmental agencies or departments of city—May transfer such profits to general fund—Section 5625-13 et seq., G. C.
- 3. Authority of officials who operate municipal transit system to make purchases and incur expenses—Opinions Attorney General 1942 page 773 approved and followed.
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- 6. City council, Cleveland—General appropriation of revenues—Cleveland Transit System—Authority of transit commission—Contract—Expenditures not exceeding ten thousand dollars.
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 - 2. Penalty for rape with consent—Imprisonment, one to twenty years in penitentiary or six months in county jail or workhouse—Penalty applies whether offense committed upon daughter or sister of guilty party or female unrelated to offender—Section 12414 G. C.—Person sentenced to penitentiary for such offense, eligible for parole, expiration of one year, subject to requirements, section 2209-17 G. C. as to notice of intended parole.
 - 3. Concurrent sentences-Penitentiary-Parole-Notice-Section 2209-17 G. C. 704
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- 1. Public employe, appointive or elective, who ceases to be member for cause other than death or retirement, may upon demand within ten days after cessation of service, be paid his accumulated contributions in savings fund— Membership ceases.
- 2. Failure to make demand for payment accumulated contributions—New publie employment—Further contributions to fund—Membership may not thereafter be discontinued or contributions withdrawn—Sections 486-65, 486-65a G. C.
- 1. Where member passed age of sixty years applies for retirement account of disability, it is duty of board to retire such member upon superannuation retirement-Section 486-62 G. C.
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- 2. Authority, superintendent of insurance to license dealers and salesmen to dispose of stock issued by life insurance company.
- 3. Life insurance company cannot be licensed as dealer in securities under Ohio Securities Act to sell its own stock prior to time subscriptions for capital stock have been received—Amount at least equal to that articles state it shall have to commence business.....

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- 1. Utility, publicly owned—Qualified and granted authority by Industrial Commission to become self-insurer—In category of public employer, purpose to pay into surplus fund—Contributions—Accredited to public fund, not private fund—Sections 1465-69, 1465-54, 1465-59 G. C.
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 - 3. Where city purchased privately owned street railway company, qualified and accepted, self-insured risk by Industrial Commission—City by ordinance assumed all workmen's compensation obligations of predecessor—Privately owned utility—Industrial Commission may transfer old risk to new risk— Publicly owned utility.

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- 1. Prior to its enactment, where applicant appeared for examination—Certicate to practice osteopathy and surgery—Paid examination fee—Failed to obtain passing mark in examination—Such applicant may not now take examination in subjects prescribed by former section 1288 G. C. and be licensed to practice.
- 2. Where applicant has preliminary educational requirements for admittance to examination—Failed examination—Status—Sections 1270, 1273 G. C.
- 3. State Medical Board, since enactment said House Bill, has no authority to issue certificates for the practice of osteopathy and surgery—May issue certificates to practice osteopathic medicine and surgery to those who complied with provisions of act

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- 1. Ditch—Joint board of county commissioners of joint county ditch project— May designate county engineer in any one of counties interested, to survey and do necessary field work.
- 2. Where no agreement on one of such engineers, county engineer of county in which petition for project is filed, must make survey and do field work.
- 3. No authority to employ any other engineer.

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- 1. Municipality—Owns and operates transit system—May pay to any other administrative department of city full value for any service or material furnished—Part of operating expense.
- 2. May not pay from operating revenues or profits of transit system into general fund of city, stipulated sum for general services of council, mayor or other governmental agencies or departments of city—May transfer such profits to general fund—Section 5625-13 et seq., G. C.
- 3. Authority of officials who operate municipal transit system to make purchases and incur expenses—Opinions Attorney General 1942 page 773 approved and followed.
- Funds subject to provisions of Uniform Depositary Act—Section 2296-t et seq., G. C.—Exception—Charter—Special provisions as to deposit of public moneys.
- 5. City of Cleveland-Tax levies-Uniform Tax and Budgetary Law-Annual general appropriation made by council-Article XII, section 2, Constitution of Ohio, sections 5625-1 to 5625-39 G. C.
- 6. City council, Cleveland—General appropriation of revenues—Cleveland Transit System—Authority of transit commission—Contract—Expenditures not exceeding ten thousand dollars.
- 7. Transit commission---Cases of emergency--Purchases involving experiditure not exceeding ten thousand dollars without advertising---Cleveland charter provision---Section 113-4 not invalid---No violation of section 4328 G. C...

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- 1. Bank, state or national—Where accounting records show valuation of capital, surplus, reserve and undivided profits in separate classifications showing reserves for designated contingencies, all of such items must be included in tax base computed by Tax Commissioner—Assessment—Tax-able shares—Section 5412 G. C.
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- 1. Coal—Purchased by consumer from dealer or mining company—Transportation tax, section 3475 Internal Revenue Code, added to charge made to consumer—Paid by company—Charge is part of price upon which sales tax is computed—Section 5546-2 G. C.
- 2. When consumer purchases coal at mine and pays cost of transportation to place of consumption, transportation tax not part of price paid for coal upon which tax computed—Sections 5546-1, 5546-2 G. C....

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- 2. Trustees not required to cover entire territory of township outside corporate limits of any municipality—May include such portion deemed advisable.
- 3. Cost—To acquire and maintain fire equipment or obtain protection—Cannot be paid out of general funds of township—Must be paid by tax levy, taxable property in district or by bond issue—Sections 3298-55, 3298-56 G. C.

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- 2. "Voluntary payments in addition to contributions required under" section 1345-4 G. C. made on or before June 30, 1943-Must be credited in employer's account as of computation date next following such payment.

Township trustees :

- 1. May purchase building to house and store machinery and tools owned by township—Section 3373 G. C.
- 2. May purchase building to house and store such equipment without submitting question to vote of electors of township.
- 3. Where such purchases used for construction, maintenance and reconstruction of highways, purchase price may be paid from road fund created by reason of levy of taxes on taxable property of township—May not be paid from proceeds of liquid fuel tax distributed under authority of section 5541-8 G. C.....
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Township trustees:

- 1. May purchase buildings to house and store machinery and tools owned by township—Section 3373 G. C.
- 2. May purchase building to house and store such equipment without submitting question to vote of electors of township.
- 3. Where such purchases used for construction, maintenance and reconstruction of highways, purchase price may be paid from road fund created by reason of levy of taxes on taxable property of township—May not be paid from proceeds of liquid fuel tax distributed under authority of section 5541-8 G. C.....

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- 2. Where buildings omitted over period of years from assessments in name of owner of realty and erroneously assessed in name of lessee, duty of county auditor, upon discovery of error, to add buildings to listing of real property in name of owner on current duplicate—Where no change of ownership, duty to add to taxes of current year, simple taxes on omitted property ior each of preceding five years.

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- 1. Municipal corporation—Annexation—Portion of township—Division of township funds—Made by county auditor as of date when annexation effective—Section 3557-1 G. C.
- Section 3557-1 G. C. contemplates division of all funds of township, raised by taxation or otherwise—Exception, funds to pay indebtedness of township.
- 3. Division of funds—Unencumbered balances of funds actually on hand— Moneys in process of collection—Not included in division of funds......

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- 1. Municipality—Owns and operates transit system—May pay to any other administrative department of city full value for any service or material furnished—Part of operating expense.
- 2. May not pay from operating revenues or profits of transit system into general fund of city, stipulated sum for general services of council, mayor or other governmental agencies or departments of city—May transfer such profits to general fund—Section 5625-13 et seq., G. C.
- 3. Authority of officials who operate municipal transit system to make purchases and incur expenses—Opinions Attorney General 1942 page 773 approved and followed.
- Funds subject to provisions of Uniform Depositary Act-Section 2296-1 et seq., G. C.-Exception-Charter-Special provisions as to deposit of public moneys.
- 5. City of Cleveland—Tax levies—Uniform Tax and Budgetary Law— Annual general appropriation made by council—Article XII, section 2, Constitution of Ohio, sections 5625-1 to 5625-39 G. C.
- 6. City council, Cleveland—General appropriation of revenues—Cleveland Transit System—Authority of transit commission—Contract—Expenditures not exceeding ten thousand dollars.
- 7. Transit commission—Cases of emergency—Purchases involving expenditure not exceeding ten thousand dollars without advertising—Cleveland charter provision—Section 113-4 not invalid—No violation of section 4328 G. C.
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- 2. "Voluntary payments in addition to contributions required under" section 1345-4 G. C. made on or before June 30, 1943-Must be credited in employer's account as of computation date next following such payment....

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- 1. County auditor—Immediately after each August settlement should certify as delinquent all lands upon which taxes and assessments, or either, together with penalties have not been paid—Two consecutive semi-annual tax settlement periods, at least, preceding August settlement—List should not include any lands included in any previously published list—House Bill 260, 95th General Assembly.
- 2. Lands certified delinquent, published prior to August 11, 1943 should not be submitted to county board of revision for forfeiture, nor to prosecuting attorney for foreclosure proceedings until expiration of three years after certification provided for in section 5704—Sections 5718, 5718-1 G. C.

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TENEMENT-

- 1. Buildings—"Residential buildings"—All buildings designed for occupancy as residences—Apartment houses included.
- Jurisdiction-Board of county commissioners-County where building regulations adopted-Concurrent jurisdiction-Chief inspector of workshops and factories-Tenement and apartment houses-Alterations or additions-Sections 2480, 989, 996, 1000, 1002-1, 1028-1 G. C.
- 3. "Public building"—Does not include tenement houses or apartment houses —Section 12600-296 G. C.
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- 1. Man over eighteen years of age—Sexual intercourse with daughter or sister under sixteen years of age with her consent—May be prosecuted and punished under section 12414 G. C. notwithstanding fact he is also guilty of incest.
- 2. Penalty for rape with consent—Imprisonment, one to twenty years in penitentiary or six months in county jail or workhouse—Penalty applies whether offense committed upon daughter or sister of guilty party or female unrelated to offender—Section 12414 G. C.—Person sentenced to penitentiary for such offense, eligible for parole, expiration of one year, subject to requirements, section 2209-17 G. C. as to notice of intended parole.

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