

Ohio Fights to Keep Fleming in Prison

COLUMBUS, Ohio, Sept. 30. — Assistant Attorney General Isadore Topper filed the state's brief in common pleas court here Wednesday arguing why Thomas W. Fleming, former Cleveland councilman, should not be released from the penitentiary where he is serving a 33 months sentence for accepting a bribe.

Fleming's counsel, Alexander H. Martin, contends that Fleming is serving a definite sentence of two years and nine months and with allowance for good behavior, was eligible for freedom Aug. 26. Fleming was sentenced by Judge F. Craig McBride of Hillsboro, Ohio, under the old law permitting courts to fix a judicial minimum. This law was repealed at the last session of the state legislature, and under a new statute a prisoner is eligible for parole after the expiration of the minimum sentence fixed by statute. The new law was made retroactive. In Fleming's case the minimum is one year.

It is the state's contention that his case now rests with the state parole board. Should the court hold that Fleming is entitled to release, about 2,000 other prisoners in the peniten-

tiary and 500 at the London prison farm will be eligible for immediate release.

Attorney Martin, Fleming's counsel, contends that Fleming's claimed definite sentence of two years and nine months has become one of not less than one year and not more than two years and nine months fixed by the court and that the minimum term read into his sentence is subject to credits for good behavior. The state contends that Fleming is entitled to the benefits of good time under one of the two statutes allowing credits, but not under both, and that, even if Fleming is serving a definite sentence, he is not entitled to release until the latter part of October, 1932.