

PENITENTIARY: Prosecution of escapes and payments of rewards for apprehension and delivery of escapees.

August 29, 1945

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Honorable Thos. H. Whitecotton
Director, Department of
Penal Institutions
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an opinion, based upon the following statement:

"Attached is correspondence relating to the payment of rewards for the arrest and detention of Charles Enochs, #55334, and Thomas Ford, #40824, who boarded a train at Boonville on July 28 and were apprehended at Marshall the same day.

"These inmates of the Penitentiary were assigned as trustees at Boonville and were working at the Power House as fireman and engineman.

"I will appreciate your opinion as to whether those men so assigned can legally be charged with an escape and whether, if they cannot be charged with escape, the Penal Board could legally pay a reward for their apprehension and detention."

Section 4307, R.S. Mo. 1939, reads:

"If any person confined in the penitentiary for any term less than life shall escape from such prison, or, being out under guard, shall escape from the custody of the officers,

he shall be liable to the punishment imposed for breaking prison."

In the case of State v. Betterton, 295 S.W. 545, a convict escaped from a prison farm and was prosecuted for that escape under Section 4306, R.S. Mo. 1939, which covers the escape of an inmate confined in the penitentiary or the convict in lawful custody going to the penitentiary. The court held in this case that an escape from a place outside the penitentiary is a violation of Section 4307, supra, and said:

"* * * * it does not follow that the escape of a 'trusty' convict from the place of his employment and detention outside of and remote from the penitentiary is an escape from the penitentiary. * * * *"

The court further said:

"Our investigation discloses that section 3161, R.S. 1919 (now Section 4307), was framed to cover escapes of convicts under the circumstances shown by this record."

In the case of Ex parte Rody, 152 S.W. (2d) 657, the Supreme Court said:

"* * * * Sec. 4306 applies to convicts in lawful custody going to the penitentiary, and to those who break the prison walls and escape after they are in. Sec. 4307, supra, specially applies to convicts who escape from the custody of the officers while out under guard * * * *"

The court held in the Betterton case that a convict who escaped while outside the prison walls could not be prosecuted under Section 4306, R.S. Mo. 1939, because he was not confined in the penitentiary, and in the Rody case affirmed that ruling. The court also held that said convict, while outside the walls of the penitentiary, was constructively confined in the penitentiary and subject to the rules and regulations thereof.

Section 9081, R.S. Mo. 1939, regulates the paying of rewards for the apprehension and delivery of escaped convicts, and reads as follows:

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"Whenever any convict shall escape from the penitentiary, it shall be the duty of the commission to take all proper measures for the apprehension of such convict; and for that purpose it shall offer to pay a reward, not exceeding one hundred dollars, if such convict be apprehended outside of Cole County, and twenty-five dollars if such convict be apprehended in Cole county, for the apprehension and delivery of such convict; such reward shall be chargeable to the state."

You will note that Section 9081, supra, states "whenever any convict shall escape from the penitentiary." This section does not make it necessary for the escape to have been from within the penitentiary, therefore an escape from outside the penitentiary would come within Section 9081, supra, in view of the ruling in the Rody case, supra, holding that such convict would be constructively confined in the penitentiary.

Conclusion.

It is the opinion of this department that the convicts mentioned in your request for an opinion could be prosecuted under Section 4307, supra, and that the Penal Board could legally pay a reward for the apprehension and delivery of said convicts, as provided by Section 9081, supra.

Respectfully submitted,

W. BRADY DUNCAN
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APPROVED:

J. E. TAYLOR
Attorney General

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