

FOUR QUESTIONS:
Sale of convict made goods,
wares and merchandise.

) Convicts cannot legally enter into
) contract with third persons, for
) the purchase of convict made goods,
) wares or merchandise, made on their
) own time, using their own materials,
) purchased with their own funds.

September 17, 1951

9-17-51

FILED
26

Hon. Ralph N. Eidson, Warden
Missouri State Penitentiary
Jefferson City, Missouri

Dear Mr. Eidson:

Your letter of recent date requesting an opinion of this department on the legal right of the Department of Corrections to operate a retail sales stand in the penitentiary for the purpose of selling articles of goods, wares and merchandise made by prisoners in their spare time, using their own material, and purchased with their own funds, contains four separate questions.

Owing to the length of your letter we are for the purpose of this opinion setting out only the four questions which read as follows:

- "Question 1: What is our legal right to conduct a retail sales stand for the sale of novelty and hobby items made by the inmates of the penitentiary during their own spare time, using materials purchased by the inmate with his own funds?
- "Question 2: Does an inmate have the legal right to enter into a contract to furnish items to a store or private individual for re-sale, either within the state or outside the state?
- "Question 3: Does the novelty stand have the legal right to furnish items from the stand to retail vendors within the State of Missouri?

Hon. Ralph N. Eidson, Warden

"Question 4: Can items made by the inmate on a hobby and novelty basis for his own mental well-being and small income, be freely admitted into interstate commerce?"

We have made a search of the law on the subject of the operation of a retail sales, novelty and hobby stand, and have been unable to find any statute dealing with this type of outlet for goods, wares, or merchandise made by the inmate while in the penitentiary.

The rule or principle of law governing the sale and transportation of prison made goods, would, we think, apply to the articles of goods, wares and merchandise made by convicts on their own time, using their own materials, which are purchased with their own funds while confined in the penitentiary.

We will take up your questions in chronological order:

Question No. 1

Section 216.090, R. S. Mo. 1949 reads in part as follows:

"In the correctional treatment applied to each inmate, reformation of the inmate, his social or moral improvement and his rehabilitation toward useful, productive and law-abiding citizenship shall be guiding factors and aims.

* * * * *

We think the plan intended by the terms of the above quotation is sufficiently broad enough to give legal right to the maintenance and operation of the retail sales stand by the Department of Corrections as an inducement to the inmates to occupy and improve themselves in preparation for a better social life upon their dismissal from the institution.

This section applies to each inmate under the jurisdiction of the Department of Corrections in all branches of penal institutions thereunder, and should be dealt with, with the same object and

Hon. Ralph N. Eldson, Warden

purpose in mind, that is the reformation, social and moral improvement and rehabilitation of the inmate to become a productive, law-abiding citizen as the guiding factors, while within the custody of the Department of Corrections, and to conduct an outlet for the articles made by the inmates in their spare time using their own material, purchased with their own funds, would be in keeping with the provisions of the above mentioned section.

Question No. 2

We note this question is prompted by an inquiry from Representative Paxton H. Ackerman, of the City of St. Louis and seems to be the principal question in your request.

Persons convicted of a crime and sentenced to the penitentiary, upon being received and admitted, forfeit all their civil rights during the time they are confined therein, and until such disability is removed, either by operation of the law or by an act of the Governor.

Section 222.010, R. S. Mo. 1949 provides as follows:

"A sentence of imprisonment in the penitentiary for a term less than life suspends all civil rights of the persons so sentenced during the term thereof, and forfeits all public offices and trust, authority and power; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead."

In the case of Ward v. Morton, 242 S. W. 966, the question arose as to the right of a convicted felon being legally competent to make a warranty deed for the transfer of real estate, and our court said at l. c. 969:

"* * * * While we find no authority directly in point in this state, we do find precedent by analogy in other jurisdictions. Thus in Harmon v. Bowers, 78 Kan. 135, 96 Pac 51, 17 L.R.A. (N.S.) 502, 16 ann. Cas. 121, under statutes of Kansas almost identical with those of Missouri, it was held that the suspension of the civil rights of a person sentenced to the penitentiary for a term less than life did not begin until the date of actual imprisonment under the sentence, and that a deed executed before confinement, and while execution of the judgment of conviction was stayed by an appeal, was valid. In Ex parte Jones and Ellwood, 41 Cal. 209, it was held that a convict released on bail was not to be considered imprisoned during the time of such release. In 13 C. J. 915, the rule is

Hon. Ralph N. Eldson, Warden

laid down that 'the statutory disabilities (suspension of civil rights) continue only during the imprisonment.'"

In the case of O'Reilly v. Cleary, 8 Mo. App. 186, 1. c. 190, the court said:

"The law provides that a sentence of imprisonment in the penitentiary suspends all civil rights of the convict during the term."

This was a case where the convict, after being discharged from the penitentiary tried to recover money paid out on a contract while confined in the penitentiary and the court held that his civil rights being suspended, he was not competent to make contract and could not recover on the same.

Thus imprisonment in the penitentiary suspends an inmate's civil rights, of which the right to enter into contract is one, and until such disability has been removed the inmate cannot legally enter into a contract. Therefore, in answering Question No. 2, the question raised by Representative Ackerman, the answer would be in the negative, and a contract made by an inmate to furnish items to a store or a private individual would not be a valid legal contract and would be nonenforceable.

Question No. 3

We are unable to find any statute prohibiting sales to retail vendors from the novelty and hobby stand at the penitentiary. We think the principles embodied in Section 216.090, supra, would permit sales in any quantity at the stand to anyone desiring to purchase same.

Question No. 4

This question involves the interpretation of the Federal Statute affecting the transportation of prison made goods in interstate commerce.

Section 1761, Chapter 85, Title 18, U.S.C.A., reads as follows:

Hon. Ralph N. Eidson, Warden

"Sec. 1761. Transportation or importation

(a) Whoever knowingly transports in interstate commerce or from any foreign country into the United States any goods, wares, or merchandise manufactured, produced, or mined, wholly or in part by convicts or prisoners, except convicts or prisoners on parole or probation, or in any penal or reformatory institution, shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

(b) This chapter shall not apply to agricultural commodities or parts for the repair of farm machinery, nor to commodities manufactured in a Federal District of Columbia, or State institution for use by the Federal Government, or by the District of Columbia, or by any State or Political subdivision of a State. June 25, 1948 c. 645, 62 Stat. 785."

The above section had its source in 54 Statute 1134, and was approved on October 14, 1940, to become effective one year after that date, being Section 396a of the 1940 addition, U. S. Code, Title 18, and was later amended by 55 Statute 581, which amendment, however, did not change the substance of the original statute. By 62 Statute 785, the former statute was again re-enacted with change in form but no change in substance, and became effective June 25, 1948.

The original statute had in parenthesis, the following phrase, "except convicts or prisoners on parole or probation", in the 1948 statute the parenthesis were omitted and commas were substituted. We think, however, the later statute should be read as though the parenthesis were still there, making the exception apply to convicts or prisoners who are on parole or probation, then the statute, with reference to the manufacture and production of the articles, would mean:

Whoever shall knowingly transport in interstate commerce, or from any foreign country into the United States, any goods, wares and merchandise, manufactured, produced or mined, wholly or in part by convicts or prisoners in any penal or reformatory institution, except convicts or prisoners on parole or probation, would be subject to the penalties provided for in Section 1761, Title 18, U.S.C.A.

Hon. Ralph N. Eidson, Warden

CONCLUSION

It is the opinion of this department that, under the law the Department of Corrections can legally operate and maintain a novelty and hobby stand for the purpose of offering goods, wares and merchandise made by inmates in their spare time, using materials purchased with their own funds as a step towards reformation, social and moral improvement and the rehabilitation of such inmates in an effort to make them law-abiding citizens upon being discharged.

Further, it is the opinion of this department that a contract entered into by inmates with a store or private individual for the resale, either in this State, or outside of this State, of the goods, wares and merchandise made by them in their spare time, using their own merchandise and purchased with their own funds, would be void and nonenforceable.

We are of the further opinion that if a retail vendor makes quantity purchases at the hobby and novelty stand, spoken of herein, and offers them for resale he does so at his own risk.

It is further the opinion of this department that the novelty and hobby items made by inmates of the penal institutions of the State of Missouri, which are made for their own mental well-being and small income cannot be freely admitted into interstate commerce.

Respectfully submitted

GORDON P. WEIR
Assistant Attorney General

APPROVED:



J. E. TAYLOR
ATTORNEY GENERAL

GPW:A