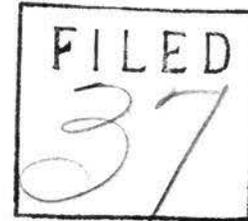


PROBATION: Information received by probation and parole officers
PAROLE: privileged.

April 27, 1938

H-30

Honorable Frank G. Harris
Chairman
Board of Probation and Parole
Jefferson City, Missouri



Dear Sir:

This acknowledges your request for an opinion under date of April 22, 1938, as follows:

"Please, at your convenience, render us an opinion on the following question:

Section 9, Laws 1937, page 403 relating to probation and parole would indicate that the information received by any probation officer and set forth in his report to the Board of Probation and Parole is privileged.

We would like to have you set forth in your opinion the extent of this privilege."

The section you refer to provides as follows:

"Information and data obtained by a probation or parole officer appointed under the provisions of this Act in the discharge of his official duty, shall be privileged information, shall not be receivable in any court, and shall not be disclosed directly or indirectly to any one other than the members of the

Board of Probation and Parole and judges entitled under this Act to receive reports, unless and until otherwise ordered by said Board or judge. All public officers are hereby required to assist said Board and its parole and probation officers in effectuating paroles and probations, and shall permit said Board or its parole and probation officers to have free access at reasonable times to all public records."

Section 1 of the Laws of Missouri 1937, page 400, names the courts that may place a defendant on probation, as follows:

"The circuit and criminal courts of this State, the court of criminal correction of the City of St. Louis, and boards of parole created to serve any such court or courts, may place on probation any defendant eligible for judicial parole under Sections 3809 to 3821, inclusive, of Article 18, Chapter 29, Revised Statutes of Missouri, 1929. After a conviction, or a plea of guilty, the courts and boards of parole named in this Section may suspend the imposition or execution of sentence of any person legally eligible for judicial parole under said Sections 3809 to 3821, inclusive, and may also place the defendant on probation."

Section 5 of the Laws of Missouri 1937, page 402, provides among other things for the supervision of persons released on parole or conditional pardon as follows:

"The Board of Probation and Parole shall have authority and it shall be its duty to study prisoners committed to State correctional and penal institutions to select prisoners to be recommended to the Governor for parole, commutation of sentence, or pardon; to provide for applications for paroles, commutations of sentence, and pardons; to investigate the merits of such application; to make recommendations to the Governor relative to paroles, commutations of sentence, and pardons; to recommend conditions deemed by them advisable in the case of prisoners whose release on parole, commutation of sentence, or conditional pardon is recommended; to provide for the supervision of persons released on parole or conditional pardon; and to recommend to the Governor the revocation of paroles or conditional pardons when their conditions have been violated. Said Board shall keep and preserve complete files, and records of all prisoners held in or released from state penal and correctional institutions and the recommendations made by them relative to such prisoners. The Board may adopt rules and regulations relative to the eligibility of prisoners for parole. The Board of Probation and Parole may, at the written request of the judge or judges of a court named in Section 1 of this Act, or a board of parole authorized to serve such court, authorize parole officers appointed by said Board to act as probation officers for such court or board of parole."

Prior to the creation of the present Board of Probation and Parole (Laws of Missouri 1937, pages 400, 403), after an inmate was discharged or paroled he was left to shift for himself, and unless he had relatives or friends who were able and prepared to help him to make normal contacts with society he found himself following the same path that lead to his incarceration. Under the present scheme a discharged or paroled prisoner has a counselor to whom he may look for assistance and advice in aiding him to get reestablished. It is necessary that the parolee have the confidence of parole and probation officers if he is to adjust himself and the latter to aid him to the fullest extent. Under this modern system of paroles and pardons there is not only an economic saving to the State, but more important a greater likelihood that the parolee will be able to take his place in society as a useful citizen.

The Legislature in realizing the necessity of fostering a spirit of confidence between parolee and the parole and probation officers has decreed that the information and data received by the officers should be privileged.

The extent of the privilege in our opinion is clearly stated in Section 9 supra, and needs no statutory interpretation thereof. (Cummins vs. Kansas City Public Service Company, 66 S.W. (2) 920, 334 Mo. 672. However, to show the extent that our courts have gone in protecting information obtained by public officers it is well to point out the case of State ex rel. Douglas vs. Tune, et al. 203 S.W. 465, l. c. 467, 199 Mo. App. 404. In that case the complaint board of the City of St. Louis was under its charter (Article XIV, Section 2), authorized to hear and examine complaints against any officer or employees of the City. By a writ of mandamus it was sought to compel the Board to produce a letter complaining against an employee which was to be used as a basis of an action for libel against the sender. The Court in holding that the Board could not be compelled to produce such a letter, said:

"In the very highest sense, they are the confidential servants of the city and of its officers, for the purpose of advising those officers as to the character, fitness, ability and suitability of the various employes of the city, as well as of the acts of public utility corporations. We can conceive of no higher, more important, and useful branch of public administration than the duties thrown upon this Complaint Board. It is almost a necessary implication, when we consider the creation and objects and scope of this board, that communications from citizens, complaints from citizens, are the main source for putting the powers of inquiry of the board into play.* * * * In our opinion these communications by citizens to the Complaint Board, covering the conduct of public officers and employes, are to be considered as highly confidential, and as records to which public policy would forbid the confidence to be violated. Such is said to be the law where the question has been very fully considered in a recent work on evidence, namely, Jones' Commentaries on the Law of evidence in Civil Cases, vol. 4, sec. 762, p. 576, to which, without repeating or reproducing, we refer, There the case of Boske vs. Comingore, 177 U.S. 459, 20 Sup. Ct. 701, 44 L.Ed. 846, is referred to and quoted at length as sustaining the confidential character of such communications."

When we consider the creation and objects and scope of the Board of Probation and Paroles, to permit the information and data to be other than privileged would defeat the very purpose of the Board.

Hon. Frank G. Harris

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April 27, 1938

From the foregoing we are of the opinion that the information and data obtained by a probation and parole officer appointed under the Laws of Missouri 1937, pages 400, 403, is privileged to the extent that it is not receivable in any court and cannot be disclosed directly or indirectly to any one other than the members of the Board of Probation and Parole and Judges of the Circuit and Criminal Courts of this State including the Court of Criminal Correction of the City of St. Louis, unless and until otherwise ordered by said board or judges.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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