

PARDON AND PAROLE: BOARD OF: Board cannot parole inmate of Intermediate Reformatory until compliance with Section 8477 R. S. 1929. The governor can parole at any time after conviction regardless of Section 8477.

January 13, 1941

Mr. H. S. Johnson, Member
Board of Probation and Parole
Jefferson City, Missouri

1-24



Dear Mr. Johnson:

This is in reply to your request for our opinion, which is in the following terms:

"I desire an official opinion on the following:

1. Does the Board of Probation and Parole have authority to parole inmates from the Intermediate Reformatory any time prior to the time they have served seven-twelfths of their sentence?
2. Is the Board of Probation and Parole authorized to parole an inmate from the Intermediate Reformatory without a suitable home, free from criminal influence and without expense to the state, having been offered.

Does the law creating the Board of Probation and Parole, Statute 1937, and giving them certain powers relative to paroles, commutation of sentence from the Intermediate Reformatory, supercede other laws with reference to parole, and particularly Section 8477, R. S. Mo. 1929?"

The Board of Probation and Parole was created by Section 8334-2 R. S. 1929, as amended Laws 1937, page 400, Section 2, Mo. St. Ann. page 6180, where it was given the powers theretofore vested in the commissioners of the Department of Penal Institutions and the Intermediate Reformatory Parole Board.

The present statutes prescribe no duties for the commissioners of the Department of Penal Institutions relative to pardons, paroles, commutations and reprieves. Previous statutes which provide for such duties have been repealed. For example: Section 8330 did provide that said commissioners should perform such duties, theretofore performed by the state prison board. Said Section 8330 was repealed by Laws 1939, page 566, Section 1, Mo. St. Ann. page 6179. Section 8520 was repealed by Laws 1939, page 608, Section 1, Mo. St. Ann. page 6241. Section 8515-8517 were repealed by Laws 1939, page 608, Section 1, Mo. St. Ann. page 6240.

The power to parole inmates of the Intermediate Reformatory was formerly vested in a special parole board for that institution by Section 8478 R. S. 1929, Mo. St. Ann. page 6227, which in part provides that ". . . the commissioner of paroles of the department of penal institutions . . . and . . . shall constitute a parole board for said Intermediate Reformatory and . . . they shall grant paroles * * * ." This power was transferred to the Board of Probation and Parole by said Section 8334-2; and, Section 8478, supra, was repealed by Laws 1939, page 606, Section 1, Mo. St. Ann. page 6227.

When said power of parole was vested in a board created by the legislature in Laws of 1927, at the same time a limitation was placed on said power by what is now Section 8477 R. S. 1929, Mo. St. Ann. page 6227, which in part provides:

"Any inmate who shall be confined in said reformatory, who shall serve seven-twelfths of the time for which he may have been sentenced, in an orderly and peaceable manner without having any in-

January 13, 1941

fraction of the rules of the reformatory or laws of the same recorded against him, shall be eligible for making application for parole and shall be given a hearing for parole. No inmate shall be paroled from said reformatory until he shall have served seven-twelfths of the time for which he was sentenced, nor until he shall have given evidence that he is fit to be paroled into the life of the community, nor until he shall submit satisfactory evidence that arrangements have been made for his honorable and useful employment for at least six months in some suitable occupation and also for a proper and suitable home free from criminal influences and without expense to the state."

The Board of Probation and Parole has no authority to parole an inmate of the Intermediate Reformatory unless and until the above quoted requirements of Section 8477 have been satisfied. That section has not been superseded by the law creating the said board; the two statutes are not inconsistent.

In addition to the aforesaid power of parole derived from said Section 8478, the board is given the power by Section 8334-5 R. S. 1929, as amended Laws 1937, page 400, Section 5, Mo. St. Ann. page 6180 merely:

"* * * 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 make recommendations to the Governor relative to paroles, commutations of

sentence, and pardons; * * * * *."

The law does not favor repeals by implication, and if by any fair interpretation all sections of a statute can stand, there is no repeal by implication. State ex rel Karbe vs. Bader 78 S. W. (2nd) 835, 336 Mo. 259.

However, under the above mentioned authority, nothing prevents the board from recommending to the governor for parole by him an inmate of the Intermediate Reformatory who has not complied with Section 8477, supra. The governor's power to pardon and parole is derived from the Constitution itself. Article V, Section 8, 15 Mo. St. Ann. page 526 in part provides:

"The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such condition and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons."

That power to pardon includes the power to issue a conditional pardon (46 C. J., page 1182, Section 3), or a parole which is the same thing. It was so ruled in State v. Asher, (Mo. Sup.) 246 S. W. 911, l.c. 913, and the following definition of a parole was quoted with approval:

"A form of conditional pardon, by which the convict is released before the expiration of his term, to remain subject, during the remainder thereof, to supervision by the public authority and to return to imprisonment on the violation of the condition of the parole." See 46 C. J., page 1183, 1184, Section 6.

The legislature has enacted statutes (Section 8518 R. S. 1929 as amended Laws 1933, page 329, Section 1, Mo. St. Ann. page 6240) to the same general effect as Article V, Section 8 of the Constitution, supra, but the governor's power in this respect is not derived from statutes.

The time when the governor may issue a parole was

decided as follows in Ex Parte Collins 94 Mo. 22, l.c. 24, 6 S. W. 345:

"The constitution of this state authorizes the Governor, after conviction, which means after return of a verdict of guilty (Commonwealth v. Lockwood, 109 Mass. 323, and cas. cit.), to grant commutation for all offences, except, etc. Art. 5, sec. 8."

Under that authority the governor has the power to pardon or parole a person convicted of any felony or misdemeanor except treason, even though such person has served no time in the Intermediate Reformatory. "As stated by the Supreme Court of Missouri in Lime vs. Blagg 131 S. W. (2nd) 583, l.c. 586 (10) regarding the governor's power to pardon, parole or reprieve, "The Governor's constitutional power in that field is beyond the range of judicial or legislative encroachment. Ex parte Thornberry, 300 Mo. 661, 671, 672, 254 S. W. 1087, 1090(11)."

On that principle, the legislature has no power to limit the exercise by the governor of the power to parole. The only limitation in the Constitution is "subject to such regulations as may be provided by law relative to the manner of applying for pardons," and that does not affect this case. It does not authorize the legislature to determine who shall be eligible for a parole. Section 8477, quoted supra, and providing that inmates of the Intermediate Reformatory shall not be paroled unless they have served seven-twelfths of their sentences and have complied with certain other conditions, does not limit the exercise by the governor of his power to parole; it applies only to the Board of Probation and Parole. Said Section 8477 immediately precedes the section authorizing the original board to issue paroles (Section 8478, supra), and was not intended to apply to the governor.

Mr. H. S. Johnson

-6-

January 13, 1941

CONCLUSION

The Board of Probation and Parole cannot parole an inmate of the Intermediate Reformatory until he has served seven-twelfths of his sentence, and has given evidence of fitness, and of arrangements for an occupation and a home as provided by Section 8477 R. S. 1929. Said Section does not apply to the governor who can parole such an inmate at any time after conviction.

Respectfully submitted

LAWRENCE L. BRADLEY
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APPROVED:

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