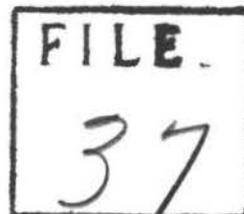


PENAL INSTITUTIONS: Costs of discharge and transportation  
of parolees to place of conviction.

July 6, 1942



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

Dear Sir:

We are in receipt of your request for an opinion,  
which reads as follows:

"A question has arisen in the minds of the Governor, the Penal Board and the Board of Probation and Parole, as to who has the obligation, under the law, to transport paroled prisoners from the State Penitentiary, Alcoa, and inmates from Boonville, back to the counties from whence they came, or to the places where they are to go upon parole after the parole is granted.

"I refer you to the latter part of Sections 9126 and 9047, R. S. Mo., 1939, which is as follows:

"'And each convict so discharged shall receive, in addition to such clothing, a sufficient sum of money to transport him to the county from whence he was sentenced.'

"The Penal Board follows the Statute with reference to parolees or those leaving upon commutation. It has been the custom at Alcoa to have the parole officer at that institution deliver,

when paroled, all parolees to the counties from whence the inmates came or to the places to which they are to go on parole. This practice was being followed when the present law relating to probation and parole went into effect in September, 1937, and has since been followed. This procedure at Algoa was put into effect, I think, while the handling of paroles and the paroling of inmates from Algoa and the State Penitentiary was under the Penal Board. The Board, no doubt, reached the conclusion that money would be saved to the State by having the parole officer deliver parolees to their homes, instead of following the Statute and giving to them a sum sufficient to transport them to the counties from whence they came. The Penal Board may have had in mind also that it was well to have an officer accompany the parolee back to his county, and deliver him to his parents or sponsor.

"The same procedure with reference to delivering parolees to the counties from whence they came, or to their homes, is being followed at the Training School for Boys at Boonville, as that followed at Algoa.

"Since the present probation and parole law went into effect in 1937, the expense of delivering parolees from Algoa and Boonville has been paid out of the appropriation for probation and parole, and the car used by each of these officers has been paid for out of said appropriation.

"We would like to have your opinion as to which Board, under the law, has the responsibility of delivering parolees from Algoa and Boonville to the counties from which they came, and also your opinion as to whether or not the procedure followed at Algoa and Boonville is proper under the law.

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"We are seeking to know the proper method, under the law, of delivering parolees from Algoa and Boonville to the counties from which the inmates came, and whose responsibility it is to deliver them."

Section 8972 R. S. Missouri, 1939, which was a re-enactment of Laws of Missouri, 1939, provides for the establishment of the Department now known as the Department of Penal Institutions. Under that Section the following institutions have been particularly placed under that Department: The Missouri Training School for Boys, at Boonville, Missouri; the State Industrial Home for Girls, at Chillicothe, Missouri; the State Industrial Home for Negro Girls at Tipton, Missouri; the Intermediate Reformatory at Jefferson City, Missouri, and the State Penitentiary and Prison at Jefferson City. This Section is part of Article 1, Chapter 48, R. S. Missouri, 1939.

In your request your inquiry is only as to parolees, but you also mentioned Section 9047 R. S. Missouri, 1939, Article 5, Chapter 48, which does not apply to the Board of Probation and Parole. This Section partially reads as follows:

"And each convict so discharged shall receive, in addition to such clothing, a sufficient sum of money to transport him to the county from whence he was sentenced."

The same phrase is also used in Section 9126 R. S. Missouri, 1939, Article 6, Chapter 48, which does not apply, and is not a part of the chapter which creates the Board of Probation and Parole. It is very noticeable, under the partial section set out, (Sec. 9047), that it is further provided: "They shall furnish to each convict \* \* ."  
This means the Commission of the Department of Penal Institutions, and not the Board of Probation and Parole. This section is only applicable when the convict is "discharged"

from the penitentiary, and, under Section 9126, supra, the money furnished for transportation back to the county in which the convict was sentenced, only applies to convicts "discharged" from the Intermediate Reformatory for Young Men.

Since both Sections 9047 and 9126 specifically provide that the convict shall be issued clothing of a certain description and a certain amount of money when discharged, in case of a discharge that is the only procedure that can be followed. When special powers are conferred, or special methods are prescribed for the exercise of a power, the exercise of such power is within the maxim *expressio unius est exclusio alterius*, and "forbids and renders nugatory the doing of the thing specified, except in the particular way pointed out." (*Kroger Grocery & Baking Co. v. City of St. Louis*, 106 S. W. (2d) 435, l.c. 439). Since upon discharge it is the duty of the Department of Penal Institutions to furnish the clothing and the money as set out in Sections 9047 and 9126, supra, the payment of this expense must be made out of the appropriation to the Department of Penal Institutions, and not the Board of Probation and Parole.

There is a wide distinction between a final discharge and a parole. This matter was passed upon in the Federal Court, in the case of *Ex parte Paris*, 18 Fed. Cas. 1104, 1105, where it was held:

"'Discharge,' as used in a statute providing for the payment of fees to United States marshals in case of the discharge of a person, means an order of discharge which releases the person entirely from custody. It does not apply to the removal of a person from one place to another, or merely bringing the person up to testify or be tried. It means discharge from the custody of the law."

In a case of parole there is no release, from all custody or jurisdiction of the parole board, to the convict.

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We find no provision for the return of boys discharged from the Missouri Training School for Boys at Boonville, that is, where they are finally discharged and are not paroled. Under Section 8, Article V of the Constitution of Missouri the Governor of the State has the power to grant reprieves, commutations and pardons, except for treason and cases of impeachment. By reason of this section the legislature enacted Section 4188 R. S. Missouri, 1939.

In the case of *State v. Asher*, 246 S. W. 911, the Supreme Court held that Section 4188, which only provides for and grants the power of pardon to the Governor, also includes the power to parole.

The Governor, in granting a parole may make such conditions and restrictions as he sees fit, if such conditions or restrictions are not illegal, immoral or impossible of fulfillment. (*Ex parte Strauss*, 7 S. W. (2d) 1000; *Ex parte Webbe*, 322 Mo. 857, 30 S. W. (2d) 612.) By reason of the above authorities the Governor may include in his parole, which is made upon the recommendation of the Board of Probation and Parole, the condition that the convict submit himself to a parole officer to be transmitted back to the county in which he was sentenced.

The authority of the Board of Probation and Parole to recommend paroles to the Governor, for convicts incarcerated in the different State penal institutions, is granted by Article 8, Chapter 48, R. S. Missouri, 1939.

Under Section 9162 the parole officers and other employees of the Board of Probation and Parole shall perform such duties as may be prescribed by such Board. As stated in your request, parole officers have been returning parolees from the Training School for Boys at Boonville, and parolees from Algoa to the place of conviction. The payment of such return should be out of the appropriation made to the Board of Probation and Parole and not out of that made to the Department of Penal Institutions.

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CONCLUSION

In view of the above authorities, it is the opinion of this Department that when a convict is discharged, either from the State Penitentiary or the Intermediate Reformatory, it is mandatory that the convict be furnished the clothing and money as set out in Sections 9047 and 9126 R. S. Missouri, 1939, and they cannot be transported back to the county in which they were sentenced by a parole officer.

It is further the opinion of this Department that there is no provision for the return of a convict after discharge from the Missouri Training School for Boys at Boonville.

It is further the opinion of this Department that upon parole when the proper condition is placed in the parole by the Governor, upon recommendation of the Board of Probation and Parole, the parolee may be transferred from the Missouri Training School for Boys at Boonville, the State Industrial Home for Girls and Chillicothe, the State Industrial Home for Negro Girls, at Tipton, the Intermediate Reformatory at Jefferson City, and the State Penitentiary and Prison at Jefferson City, by a parole officer.

It is also the opinion of this Department that when a parolee is returned to the place of conviction by a parole officer, the costs of the return should be paid by the Board of Probation and Parole, but, when a convict is discharged from the penitentiary, or the Intermediate Reformatory, the clothing and money advanced for transportation to the place of conviction must be paid by the Department of Penal Institutions.

APPROVED:

Respectfully submitted

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WJB:RW