

**PARDON AND PAROLE:** Parole can be revoked after expiration date of sentence for violation committed before such date.

---

FILED

January 7, 1946

Mr. LeRoy Munyon, Superintendent  
Missouri Training School for Boys  
Boonville, Missouri

Dear Sir:

This office is in receipt of your letter asking a question which is hereby answered by an official opinion. Your letter reads as follows:

"George Gray, 9517, 16 years old, was committed to the Missouri Training School for Boys by the Juvenile Court from St. Louis City, January 19, 1943 charged with delinquency, for a term of two years.

"The date of expiration of this sentence was January 25, 1945.

"Gray was paroled January 18, 1944 and taken to the City of St. Louis by the Parole Officer.

"On November 26, 1944 Gray was arrested on a charge of First Degree Robbery.

"On November 27, 1944 a parole violation warrant was lodged against the subject.

"On May 7, 1945 the subject was sentenced to a term of six months in the City Jail, on two terms of six months, to run concurrently.

"By order of the Board of Probation and Parole, the parole of the above

subject was revoked on June 5, 1945, approximately five months after the expiration date of his sentence to the Training School for Boys.

"Gray was returned to the Training School on November 13, 1945.

"QUESTION: Is the Superintendent of the Training School legally required to retain this boy?"

After analyzing the facts set forth in your letter, the principal question involved is can the Board of Probation and Parole cause the return of a person committed to the Missouri Training School for Boys after the expiration date of his sentence for a violation of a parole, when such violation occurred before the expiration date of his term?

Section 9157, R. S. Mo. 1939, sets up the Board of Probation and Parole, prescribes its powers and duties, and reads as follows:

"There is hereby created and established a Board of Probation and Parole. The powers and duties relative to paroles, commutations of sentence, pardons, and reprieves, now vested in the Commissioners of the Department of Penal Institutions and the Intermediate Reformatory Parole Board are hereby vested in the Board created and established by this Article. Said Board shall be deemed a continuation of the Department of Penal Institutions and the Intermediate Reformatory Parole Board in so far as the Commissioners of that Department and the Intermediate Reformatory Parole Board are empowered to act in relation to investigations, paroles, commutations of sentence, and pardons, and all matters pending before such Commissioners and the Intermediate Reformatory Parole Board in connection with paroles, commutations of sentence, and pardons shall be carried on and completed by the Board created in this Article."

Section 9157, supra, was adopted in 1937, and the powers and duties vested in the Board of Commissioners of the Department of Penal Institutions, relative to granting paroles to persons confined in the Missouri Training School for Boys, were transferred to the present Board of Probation and Parole. The powers and duties which were vested in the Board of Commissioners of the Department of Penal Institutions before the transfer were contained in Section 8353, R. S. No. 1929, providing as follows:

"Said board shall have power to permit any person committed to said institution to return to his home and to release him temporarily from confinement in said institution, but not from its control and supervision; but such permit shall be conditioned upon his continued good conduct during the remainder of the term for which he was committed to such institution. Such person shall under rules adopted by said board report to said board from time to time during the term for which he was sent to said institution, and said board shall have power to cause the return of any person to serve the time for which he was committed whenever his conduct during his permit shall make it necessary or proper in the opinion of said board to do so. The superintendent or any other officer of the institution shall have authority to apprehend and return to said institution any person whom the board may direct to be so returned. No parole shall be granted by the court or judge thereof to any person committed by such court to such institution after he shall have been received into the Missouri reformatory."

Section 8353, supra, was repealed in 1939, however the statute was continued in effect by previous reference in Section 9157, supra. Concerning such action, the following is stated in Volume 50, Am. Jur., Sections 38 and 39, page 58:

"Sec. 38. \* \* \* \* \* When in one statute a reference is made to an existing law, in prescribing the rule or manner in which a particular thing shall

be done, or for the purpose of ascertaining powers with which persons named in the referring statute shall be clothed, the effect generally is not to revive or continue in force the statute referred to for the purposes for which it was originally enacted, but merely for the purpose of carrying into execution the statute in which the reference is made."

"Sec. 39. It is a general rule that when a statute adopts a part or all of another statute, domestic or foreign, general or local, by a specific and descriptive reference thereto, the adoption takes the statute as it exists at that time, and does not include subsequent additions or modifications of the adopted statute, where it is not expressly so declared. The subsequent amendment or repeal of the adopted statute is not within the terms of, and has no effect upon, the adopting statute, where the latter statute is not also amended or repealed expressly or by necessary implication. \* \* \* \* \*"

A Missouri case, where the above stated rule was followed, is *Crohn v. Kansas City Home Telephone Co.*, 131 Mo. App. 313, 109 S. W. 1068. The following appears at l.c. 1070:

" \* \* \* \* \* In *Endlich on Interpretation of Statutes*, Sec. 35, it is said: 'An act adopting by reference the whole or a portion of another statute means the law as existing at the time of adoption, and does not adopt any subsequent addition thereto or modification thereof.' This rule is generally recognized. *Sutherland on Statutory Construction*, Sec. 257; 26 *Am. & Eng. Enc. of Law* (2d Ed.) 714; *Postal Tel. Co. v. Railroad* (C. C.) 89 Fed. 190; *Jones v. Dexter*, 8 Fla. 276; *Culver v. People*, 161 Ill. 96, 43 N. E. 812; *Darmstaetter v. Moloney*, 45 Mich. 621, 8 N. W. 574; *Matter of Main Street*

98 N. Y. 454; Commonwealth v. Kendall, 144 Mass. 357, 11 N. E. 425; Gaston v. Lamkin, 115 Mo. 20, 21 S. W. 1100. Further, it is said by the same author (section 492): 'Where the provisions of a statute are incorporated by reference in another (where one statute refers to another for the powers given or rules of procedure prescribed by the former), the statute or provision referred to or incorporated becomes a part of the referring or incorporated statute; and, if the earlier statute is afterwards repealed, the provisions so incorporated, the powers given, or rules of procedure prescribed by the incorporated statute obviously continue in force, so far as they form part of the second enactment.' \* \* \* \* \*"

We have thus shown that the powers of the Board of Probation and Parole, relative to persons committed to the Missouri Training School for Boys, appear in Section 8353, supra, which by reference is a part of Section 9157, supra.

We note that the word "permit" is used in Section 8353, supra, rather than the word "parole." Parole is defined in 46 C. J., Section 6, page 1183, as follows:

"A parole is the conditional release of a convict 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 violation of the condition of the parole. \* \* \* \* \*"

Consequently, by comparing the wording of the statute using the word "permit" with the definition of the word "parole," it appears that the two are synonymous.

In the case at bar it may appear that the subject has already served his sentence, considering the time he was in the school at Boonville with the time he was out on parole,

up until the date his parole was revoked. In this regard the case of Jacobs v. Crawford is cited, 308 Mo. 302, 272 S. W. 931. The Governor had paroled an inmate of the State Penitentiary sentenced for ten years, and after a year and two months from the time the parole was granted it was revoked. The petitioner claimed that such time should be deducted from the remainder of the sentence and with the benefit of the three-fourths rule he was entitled to be discharged. The following is stated at l.c. 932:

"In a very recent case (In the Matter of the Petition of Jasper Nounce for Writ of Habeas Corpus No. 25779, decided February 17, 1925, 269 S.W. 385, and not yet officially reported), where this court had under consideration the effect upon the term of imprisonment of time elapsed while defendant was out under parole by the trial court, we said:

"A parole is a matter of grace or favor to a convicted defendant, and, when he accepts such parole, he does it subject to all the provisions fixed by the statute, and subject to all other conditions which may be imposed upon him by the authority granting such parole, which are not illegal, immoral or impossible of performance. Such, by all the authorities, is the rule where a parole or conditional pardon has been granted by the executive or other constitutional pardoning power, and the rule applies as fully and as reasonably to paroles by trial courts under our statute."

Such being the latest and controlling utterance of this court, and such being our constitutional and statutory provisions, it would appear to be unnecessary to consider the authorities from other states, cited in the suggestions filed by counsel in this case. No statute has been cited which provides that the time during which a convict is at large under a parole by the Governor shall be deducted from his

sentence, in case such parole is revoked; nor is there any statute providing that such time shall not be deducted from such term of imprisonment. The Governor was therefore free to impose his own conditions."

Under Section 8353, supra, there is no provision allowing the period at large to be counted as a part of the sentence after the parole is revoked. The statute specifically provides that when a parole is violated the Board can cause the return of the person to serve the time for which he was committed. This can only mean the remaining time, besides what was actually served.

In Ex parte Mounce, 307 Mo. 40, 269 S. W. 385, the petitioner was sentenced to a term of two years and on the same day sentence was passed the court issued a bench parole. Later, after two years had expired, his parole was revoked. The petitioner contended that the court was without jurisdiction to terminate his parole and cause him to be returned to prison under the sentence and judgment first rendered, because such parole was not terminated within the period of two years fixed by the judgment. The court stated the following at l.c. 387:

"There is no language in the statute relating to judicial paroles which authorizes the conclusion that there is any relation whatever between the time during which a parole may be continued, and the length of the term of imprisonment imposed in the judgment, from the execution of which a defendant may be paroled. \* \* \* \* \*"

Section 8353, supra, does not require the Board of Probation and Parole to revoke the parole of a person during its term. It does require that the violation under the parole must occur during the term, and when such violation occurs the Board has the power to cause the person to be returned to the Missouri Training School for Boys.

Conclusion.

Therefore, it is the opinion of this department that the Board of Probation and Parole has the power to revoke the parole and cause the return of a person who was committed to the Missouri Training School for Boys after the expiration date of his sentence for a violation of a condition of the parole which occurred during the period of his release and before the expiration date of his sentence. The time such person was out on parole cannot be deducted from his sentence, and when the parole is revoked, such person may be compelled to serve out the term which remained unserved at the time the parole was granted. The Superintendent of the Missouri Training School for Boys is legally required to retain the subject in the case at bar.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
Attorney General

RFT:ml