

PAROLES: Right of commissioners of the Department of Penal Institutions to approve parole and grant legal discharge.

February 6, 1933



Honorable John Thornberry
Superintendent Algoa Farms
Jefferson City, Missouri

Dear Mr. Thornberry:

We acknowledge receipt of your letter dated February 4, 1933, in which you state and inquire as follows:

"I am anxious for your written opinion as to the legality of the approval of the commissioners relating to paroles from this institution as set forth in Section 8478, Revised Statutes of Missouri 1929. The clause I have reference to begins with the 11th. line in the section as appeared in the statutes "..... and with the approval of the commissioners (or governor) they shall grant paroles".

Section 8316 Revised Statutes Missouri, 1929, establishes what is known as the "Department of Penal Institutions," which department shall be under the control and management of a commission composed of five members, to be known as "Commissioners of the Department of Penal Institutions".

Section 8467 Revised Statutes, 1929, states that the Intermediate Reformatory for young men shall be under the management of the department of penal institutions.

Section 8470 provides that the commissioners of the department of penal institutions shall have control of the intermediate reformatory for young men, and shall make necessary rules among other things for the release of inmates therein.

Section 8478 provides that parole hearings may be given to all such inmates by a body consisting of the commissioner of paroles of the department of penal institutions, the superintendent of the intermediate reformatory and the attorney

general of Missouri or one of his assistants whom the attorney general may designate. Such board may grant paroles with the approval of the commissioners (or governor), the commissioners referred to are the commissioners of the department of penal institutions.

Section 8 Article 5 of the Constitution of Missouri, provides that the governor shall have power to grant reprieves, commutations and pardons after conviction for all offenses except treason and cases of impeachment. There is no question that the power of pardon rests exclusively with the executive department of the state.

State v. Schloss 25 Mo. 291.

The distinction between the meanings of the words pardon, commutation and reprieve is stated in State ex rel Bottomly v. District Court, 237 Pac. 525. The court at page 527 and 528 of the opinion saying:

"Furthermore, the terms "pardon", "commutation," and "reprieve" each had a well-understood meaning at the time our Constitution was adopted, and no one of them was intended to comprehend the suspension of the execution of a judgment as that phrase is employed in sections 12078-12086. A "pardon" is an act of grace, proceeding from the power intrusted with the execution of the laws which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed (United States v. Wilson, 7 Pet. 150, 8 L. Ed. 640); It is a remission of guilt (State v. Lewis, 111 La. 693, 35 So. 816), a forgiveness of the offense (Cook v. Middlesex County, 26 N.J. Law 326; Ex parte Powell, 73 Ala. 517, 49 Am. Rep. 71). "Commutation" is a remission of a part of the punishment; a substitution of a less penalty for the one originally imposed (Lee v. Murphy, 22 Grat. (Va.) 789, 12 Am. Rep. 563; Rich v. Chamberlain, 107 Mich. 381, 65 N.W. 235). A "reprieve" or "respite" is the withholding of a sentence for an interval of time (4 Blackstone's Commentaries, 394), a postponement of execution (Carnal v. People, 1 Parker, Cr. R. (N.Y.) 272), a temporary suspension of execution (Butler v. State, 97 Ind. 373)."

The distinction between a pardon and a parole is stated in Board of Prison Commissioners v. DeMoss 163 S. W. 183. The court of appeals of Kentucky, at page 187 of the opinion holding:

"It is manifest that the Constitution confers upon the Governor alone the power to grant a pardon; but a parole is not a pardon, and there is no provision of the Constitution declaring the Legislature incompetent to confer upon the board of prison commissioners authority to grant paroles to prisoners convicted under the Indeterminate Sentence Law, whose punishment is fixed by the law and sentence of the court. There is, therefore, nothing in its provisions conferring upon the board the power to parole convicts of that class that violates section 77 of the Constitution."

To the same effect is *People v. Hale*, 222 Pacific, 148, 152 (and cases cited).

It seems not to have been questioned in this state that the circuit courts have the right to parole offenders and no reason is apparent why the legislature could not provide for the special parole board as it does in Section 8478, and further provide for its approval by the commissioners for the department of penal institutions.

We are therefore of the opinion that the special parole board provided for in Section 8478 has legal authority to grant paroles (not pardons) when such paroles are made on conditions and when same is approved by the commissioners of the department of penal institutions or the governor.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

Attorney General.

GL:LC