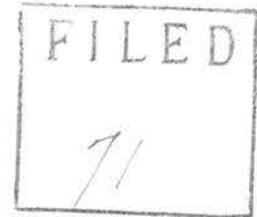


PENAL INSTITUTION: WHAT DAYS ARE HOLIDAYS FOR CONVICTS.  
CONVICTS: ✓

February 11, 1933



Honorable Stephen B. Hunter,  
Department of Penal Institutions,  
Jefferson City, Missouri.

Dear Sir:

Your letter of February 10th, 1933, to the Attorney General has been assigned to the writer for answer. Your inquiry being as follows:

"Re. Chapter 127-Title Holidays Sections 14222 to 14226 inclusive Book #2 Revised Statutes Missouri 1929.

We would appreciate an opinion from you as to the above mentioned chapter and sections regarding holidays which are to be observed in the labor of convicts here."

We are attaching hereto a copy of an opinion rendered February 26th, 1929, to the Honorable Leslie Rudolph, Warden, Missouri State Penitentiary, by the Honorable Stratton Shartel, Attorney General, which we believe covers your inquiry. Subject however, to the following changes:

1. Section 12517 R. S. Mo. 1919, referred to in the enclosed copy of opinion, is present Section 8443 R. S. Mo. 1929.
2. Section 5848 R. S. Mo. 1919, as amended laws of Missouri 1921, page 400, referred to in opinion is present Section 14222 R. S. Missouri 1929.
3. Section 5851 R. S. Mo. 1919, referred to in copy of opinion is present Section 14225 R. S. Missouri 1929.
4. We wish to add Section 14223 R. S. Mo. 1929 (5849 R. S. Mo. 1919) to the opinion, same being "Columbus Day", a public holiday, October 12th.

The Court in *Byrne Real Estate Company v. Welsh, et al*, 258 S.W. 743, used the following language in construing sections 14223 and 14225 R. S. Missouri 1929.

"Section 5851 R. S. 1919, referring to Lincoln Day occurring on February 12th, is similar to section 5849. It will be noted that in section 5849, referring to Columbus Day, it is not stated in so many words that, should Columbus Day fall upon Sunday, the Monday next following shall be considered such holiday, as is provided in section 5848 in reference to the holidays mentioned in that section. However, section 5849 does provide that Columbus Day "shall be recognized, classed and treated as other legal holidays under the laws of this state."

Plaintiff cites 29 C.J. p 762, which provides as follows;

"Where a holiday designated by statute falls on Sunday, the following Monday is not a holiday in the absence of express statutory provision to that effect."

We have no complaint to make of the rule stated in 29 C.J., but we think that by construing sections 5848 and 5849 together it is provided by our statutes that when Columbus Day falls upon Sunday the Monday next following shall be considered that holiday. It will be noted, as stated before, that section 5849 states that "Columbus Day,"\*\*\*shall be recognized, classed and treated as other legal holidays under the laws of this state." This section of the Statutes was passed in 1909 (see Laws of 1909, p. 549), long after the original enactment of section 5848 covering general holidays. Section 5848 was first enacted in a somewhat different form in 1877 (Laws of 1877, p. 37,) and appears in an

amended form in the revision of 1879 (section 551, R. S. 1879), and has been carried in the various revisions since then, and amended from time to time. See section 737, R. S. 1889, Laws of 1895, p. 47; section 461 R. S. 1899; Laws of 1909, p. 126; section 6701 R. S. 1909; section 5848, R. S. 1919. It is apparent that, when section 5849 refers to other legal holidays, it refers to the general holidays theretofore existing and mentioned in section 5848, and says that Columbus Day shall be recognized, classed, and treated as the holidays mentioned in said last-mentioned section. This is broad language and, if we give it full meaning, we must construe it as providing that, if Columbus day falls on Sunday, the following Monday shall be considered the holiday precisely as those holidays mentioned in Section 5848. Apparently the only distinction sought to be made in the law between section 5848 on the one hand and sections 5849 and 5851 on the other is that holidays provided in the latter two sections "shall not be construed to effect commercial paper, the making or execution of agreements or instruments in writing or interfere with judicial proceedings." See sections 871, 983, R.S. 1919. It is therefore our conclusion that the Monday of October 13, 1919, was Columbus Day, and a holiday under the laws of Missouri, etc."

We believe that the enclosed copy of opinion and the additions made thereto answer your inquiry.

Very truly yours,

James L. HornBostel  
Assistant Attorney General.

APPROVED

ROY McKITTRICK  
Attorney General.

JLH:MM  
Enc. C.C. Opinion  
February 26, 1929