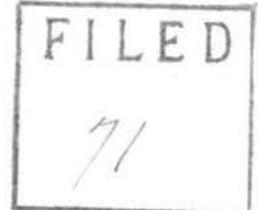


PENAL INSTITUTIONS:

Right to pay out money convicts acquired
under Section 8402 Revised Statutes
Missouri 1929.

April 3, 1933

Department of Penal Institutions
Jefferson City, Missouri



Gentlemen:

We acknowledge receipt of your letter dated April 3, 1933, in which you state in part and inquire as follows:

- "1. Has a convict the right, legally, to transfer all, or any part, of these said deposits to anyone? In other words, is this money on deposit to his credit considered entirely his, to be disposed of as he sees fit?
2. Has a relative, such as Mother, Father, Husband or wife, any lawful claim to these deposits?
3. Has the Penal Board the right to discriminate in the disposition of these funds? In other words, is it within the power of the Board to refuse to honor orders for payment of all or any part of these funds?
4. Has the Board the right to set a limit on the amount of these withdrawals by relatives, friends, or other persons?"

And you further inquire:

"It also sometimes happens that orders are presented by persons pretending to be relatives of the inmates, when in reality they are not. It is sometimes impossible for the Board to disprove this relationship, and we should like to know if it is within the power of the Board to decide the validity of such claims of relationship".

Section 8402 Revised Statutes Missouri, 1929, provides in part as follows:

"Said board shall take charge of all money and other articles of value which may be brought to the penitentiary by any convict, or come into his possession while in the penitentiary, which money or valuables, whenever the convict is discharged from prison or the same is legally demanded, shall be returned to such person as may be legally entitled to receive the same; and the board shall keep a book in which such receipts and disbursements shall be duly and properly noted." * * *

You will note that the quoted section authorizes the penal board to take charge only of the money and articles of value brought to the penitentiary by or which may come in possession of the convict and further that such money or valuables shall be legally demanded or whenever the convict is discharged it is the duty of the board to return the same to such person as may be legally entitled to receive the same.

Section 12968 Revised Statutes 1929 provides among other things, that a sentence to imprisonment in the penitentiary for a term less than life suspends all civil rights of the person so sentenced during the term of the sentence.

As to what is meant by the term civil rights is defined in Williams v. Shackelford, 97 Mo. 322, 324, in the following language:

"The right of exclusive individual dominion over property is a civil right, the creature of organized society, the right of a citizen of an organized government, and this right, under our laws, cannot be forfeited by attainder of felony. In the case of a convict felon for life it is transmitted from him to his heirs or legal representatives. In the case of a felon convict for a term of years, it is suspended during the term of his imprisonment unless transmitted *ad interim* to a trustee under the provisions of the statute, to be exercised for the benefit of his family and creditors, and to be resumed again when he is discharged."

Under the foregoing definition of the civil rights of a convict the exercise of any dominion over the money or articles mentioned in Section 8402, supra, would be the exercise of a civil right which was denied to the convict by Section 12968.

April 3, 1933

Section 12973, Revised Statutes 1929, provides for the appointment of a trustee of any person imprisoned in a penitentiary for a term less than life, to take charge of and manage the estate of the convict.

The conviction of any person for any offense whatever does not result in a forfeiture of any estate of the convict or any right or interest therein.

Williams v. Shackelford, supra, 324.

The convict simply loses his right of dominion and control over the property and for that reason the appointment of a trustee to exercise such dominion and control is provided for by the Legislature.

We are of the opinion therefore that the sole authority of the board of penal institutions is to take charge of and keep such money and articles as are mentioned in Section 8402, until the same are legally demanded of the board and that the only person entitled to legally demand such money or articles would be a trustee appointed under Section 12973, or an administrator appointed upon the death of the convict, unless of course the disabilities of the convict have been removed by proper authority issued for that purpose and that your board could not do.

The above conclusion results in our answering all of your questions in the negative.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

Attorney General.

GL:LC