

BOARD OF PENAL INSTITUTIONS:

Board of convict in Missouri Training School for Boys to be charged to county where first conviction occurs.

June 15, 1934

Honorable **Harve G. Gray**
Superintendent
Missouri Training School for Boys
Boonville
Missouri



Dear Mr. Gray:

Receipt of your letter dated June 7, 1934 is acknowledged. Your letter is as follows:

"On February 17, 1934 William Bruner #7160 escaped from this institution. He was serving a Two Year sentence from the Juvenile Court of Jackson County for the crime of Delinquency. He was sentenced October 25, 1933 and was admitted here October 26, 1933. In order to make his escape he and four other inmates burglarized a house occupied by an employee of the institution, stealing a pistol with which they held up another employee and took his car. While he was at large the authorities of Cooper County apprehended him and convicted him of Burglary & Larceny. He was sentenced to this institution from the circuit court of Cooper County for a term of Five Years for the Burglary and Five years for the Larceny. Sentences to run consecutively. Sentence to commence April 3, 1934. (which was intended to mean that this sentence was to run concurrently with the one from Jackson County.) The question now arises as to whether his board is to be charged to Cooper County, or to Jackson County until the expiration of that sentence and then to Cooper County.

Two of these boys were sent to the penitentiary and of course we were forced to drop them from their sentence here as

They were sent down there for about twenty five years. Should Bruner's case be handled in the same manner?"

Section 8359 Revised Statutes Missouri 1929, in part, provides:

"When any boy under seventeen years of age shall be committed to said reformatory or said training school * * * upon conviction of any felony or misdemeanor* * * the expenses of the maintenance of said boy,* * * shall be paid by the county in which he was convicted* * *."

Section 12969 Revised Statutes Missouri 1929, reads:

"The person of a convict sentenced to imprisonment in the penitentiary is and shall be under the protection of the law, and any injury to his person, not authorized by law, shall be punishable in the same manner as if he were not under conviction and sentence; and if any convict shall commit any crime in the penitentiary, or in any county of this state while under sentence, the court having jurisdiction of criminal offenses in such county shall have jurisdiction of such offense, and such convict may be charged, tried and convicted in like manner as other persons; and in case of conviction, the sentence of such convict shall not commence to run until the expiration of the sentence under which he may be held; * * *"

We think the words 'any convict' used in the last quoted section refers to a convict whether he be imprisoned in the state penitentiary or in the Missouri Training School

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for Boys, so that the statute last quoted would be as applicable to a convict who escapes from the Missouri Training School for Boys when he commits a crime and is convicted therefor, as it would to an escaped convict from the penitentiary who also commits a crime and is convicted thereof.

In the case of Ex parte Brunding 47 Mo. 255, the question arose as to the right of a court to sentence a defendant in a criminal case who had escaped from the penitentiary, before his term of imprisonment was completed. The court at page 256 of the opinion said:

"It seems to be settled that a prisoner under an unexpired sentence of imprisonment, where he commits an offense, may be convicted, and that the succeeding period of imprisonment will commence on the termination of the period next preceding. (1 Bish. Crim. Law, Sec.731,note; 1 Bish. Crim. Pr.,Sec.878)."

We are of the opinion that William Bruner is now serving the sentence in the Missouri Training School for Boys which was imposed on him by the Juvenile Court of Jackson County, Missouri, and that board for the said William Bruner it entitled to be charged against Jackson County.

As to whether a convict should be transferred from the penitentiary to the Missouri Training School for Boys or vice versa, when the same may be legally done, is a matter that rests in the discretion of those who have that authority and as to which it would not be proper for us to express an opinion.

We are returning you your inclosures herewith.

Very truly yours,

GILBERT LAMB
Assistant Attorney General,

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC
Inclosures