

PENAL INSTITUTIONS: Governor's power to pardon and parole.

October 15, 1937.



Honorable Frank G. Harris
Lieutenant Governor for the
State of Missouri
Jefferson City, Missouri

Dear Governor Harris:

We acknowledge your request for an opinion dated October 11, 1937, which reads as follows:

"Please give us your opinion on the following matter:

"The Constitution of Missouri provides that the Governor of this state has power to grant reprieves, pardons and paroles.

"Under the provisions of Section 8477, R. S. Mo. 1929, the Legislature has provided that no inmate shall be paroled from the Intermediate Reformatory until he has served seven-twelfths of the time for which he was sentenced.

"I would like to know if this legislative act has any force in the light of the constitutional provision relating to the Governor's power to grant reprieves, pardons and paroles."

In the matter of reprieves, commutations and pardons, after conviction of the crime, Article V, Section 8 of the Missouri Constitution provides:

"The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all

offenses, except treason and cases of impeachment, upon such condition and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. He shall, at each session of the General Assembly, communicate to that body each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the commutation, pardon or reprieve, and the reason for granting the same."

In State v. Sloss, 25 Mo. 291, 294, where the Legislature attempted a scheme to release prisoners convicted of a crime, the Act was held unconstitutional, and the Supreme Court said:

"Although questions have sometimes arisen whether a power properly belonged to one department of government or another, yet there is no contrariety of opinion as to the department of the government to which the power of pardoning offenses properly appertains. All unite in pronouncing it an executive function. So the framers of our constitution thought, and accordingly vested the power of pardoning in the chief executive officer of the state."

Pursuant to the Constitution above quoted, the Governor of this State is authorized by the Legislature to grant pardons under Section 3798, R. S. Mo. 1929, which provides:

"In all cases in which the governor is authorized by the Constitution to grant pardons, he may grant the same, with such conditions and under such restrictions as he may think proper."

The power to pardon includes the power to parole. A parole is but a conditional pardon, for in *State v. Asher*, 246 S. W. 911, 913, the Supreme Court said:

"It must follow from the foregoing that a parole is a conditional pardon, and that a 'parole' given by the Governor is but an exercise of the power vested in him by the Constitution and statute with respect to the issuance of conditional pardons."

As to the Governor's power to attach conditions, when commuting a sentence, the Court said in *Ex parte Strauss*, 7 S. W. (d) 1000, 320 Mo. 349, 351:

"The Governor may therefore attach to a commutation granted by him any condition he chooses, provided it is not illegal, immoral or impossible of fulfillment."

The Legislature has provided in Section 8477, R. S. Mo. 1929, relating to the Intermediate Reformatory for young men and their parole, as follows:

"* * * * No inmate shall be paroled from said reformatory until he shall have served seven-twelfths of the time for which he was sentenced,* * * *"

CONCLUSION.

The inmates of the Intermediate Reformatory are there because committed pursuant to a judgment and sentence of the criminal courts of this State. Justices of criminal courts are merely human beings, and human action and human intelligence is so imperfect in all mankind that at times an injustice may be perpetrated by the enforcement of inhuman rigid penalties in compliance with a judgment and sentence of a court. The criminal code is to be enforced in spite of unjust consequences resulting from human imperfections, unless the culprit be pardoned or paroled. Such is the theory of our State government as evidenced by our Constitution, statutes and judicial decisions.

To alleviate this occasional unjust result of a rigidly enforced criminal code, the people of this State have made provisions in their Constitution and fundamental law for executive clemency in such exceptional cases. To hinder, control or curtail executive clemency, where clemency is due, was not intended by the framers of our Constitution, any act of the Legislature to the contrary notwithstanding.

This department is of the opinion that Section 8477, supra, insofar as it expresses a limitation on the Governor from pardoning or paroling inmates of the Intermediate Reformatory until after serving seven-twelfths of the time for which sentenced, is in direct violation of Article V, Section 8 of the Missouri Constitution. Said legislative Act is an invasion of the constitutional prerogative of the Governor in such matters, and to that extent is unconstitutional and of no legal force.

Respectfully submitted

APPROVED:

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