

PARDON AND PAROLE: Present board may investigate and make recommendations on each application for clemency, now pending before them, irrespective of release date, if done before new act is effective.

August 30, 1937

8-30



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

Dear Sir:

This department is in receipt of your letter of August 24, 1937, in which you request an opinion as follows:

"I have before me a number of 'Commutation Paroles', which have been recommended by Mr. Sanders, the Warden, and approved by the three Board members.

After recommendation by the Warden, and approval by the three Board members, a form communication was addressed to the Governor, in which was set forth the facts in each particular case, giving the date of release of a convict under the seven-twelfths merit system. In this particular case, the date of release is on September 7. On September 6, a new Parole Board should be organized, and the present Parole Board ceases to function.

When the above-mentioned papers were presented to me, I questioned the advisability of my signing them as a commissioner of the Department of Penal Institutions, and whether I should sign such papers as show the date of release after September 6. There are thirteen of these 'Commutation Paroles' which show the release date on the 7th, 8th and 9th of September.

August 30, 1937

Please advise me, at your earliest convenience, if it is proper for one of the present Commissioners of the Department of Penal Institutions to sign this communication addressed to the Governor."

The power and authority to grant pardons is lodged exclusively in the Governor of the State of Missouri, after a person has been delivered to the Warden of the penitentiary, by Article 5, Section 8 of the Constitution of Missouri, which is in part, as follows:

"The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions 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."

Section 3798, R. S. Missouri, 1929, is as follows:

"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."

In *State v. Asher*, 246 S.W. 911, the Supreme Court of Missouri had before it, for determination, the question of what powers were included in the power of pardon, given to the Governor by Article V, Section 8 of Missouri Constitution and Section 4144, R. S. Missouri, 1919, now Section 3798, R. S. Missouri, 1929. The court said at l.c. 913:

"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

August 30, 1937

in him by the constitution and statute with respect to the issuance of conditional pardons."

Section 8515, R. S. Missouri, 1929, is as follows:

"The state prison board shall investigate fully the merits of all applications for executive clemency properly coming before the governor, and all applications for such clemency shall be heard and investigated without unnecessary delay. In each and every case said board shall, for the information of the governor, make a written report of its finding of the facts in such case, together with their recommendation thereon."

From the foregoing, it is clear that the Board of Pardons and Paroles has only the duty to investigate and make recommendations to the Governor on each application that is made for clemency. The power of granting the parole is vested solely in the chief executive of the state. The Board of Pardons and Paroles acts in only an advisory capacity, their recommendations are binding upon no one and may be completely disregarded by the Governor if he should so choose to do.

The legislature in Laws of 1937, page 400, made a revision of Chapter 44, Article VIII, Revised Statutes 1929, and by said revision removed the duty of investigating and making recommendations on application for clemency, from the State Prison Board, who constitute the present Board of Pardons and Paroles and placed these duties in the newly created Board of Probation and Paroles. This act, however, does not become effective until September 6, 1937.

The new act not being effective until September 6, 1937, the present Board of Pardons and Paroles continues to have the duties and authority that is now vested in them until that date, and must continue to perform these duties.

August 30, 1937

It will be noticed that in Section 8515, R. S. Missouri, 1929, the legislature provided that the board should act upon each application for clemency "without unnecessary delay".

It is, therefore, the opinion of this department that the present Board of Pardons and Paroles should continue to investigate and make recommendations to the Governor upon any application for clemency now pending before said board, so that each applicant for clemency, irrespective of his release date under the merit system, may have a hearing upon his application without unnecessary delay, provided said investigation and the written report and recommendation is made and reported to the Governor before the date the new enactment, above mentioned, becomes effective.

Respectfully submitted,

AUBREY R. HAMMETT, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

LLB MR