

PENAL INSTITUTIONS:

A boy convicted while under 17 years of age cannot be transferred to Algoa, and if a fugitive, sheriff is entitled to fees for returning to the Missouri Training School for Boys.

May 2, 1938

Mr. I. H. Coin,  
Sheriff of Stone County,  
Galena, Missouri.

Dear Sir:

This will acknowledge receipt of your request dated April 26, 1938, for an official opinion from this department, which request is as follows:

"I am asking your advice on a matter concerning a boy whom we have picked up for the Missouri Training School for Boys at Boonville. This boy was sentenced for five years for receiving stolen property, and after serving the usual time was paroled to S.P. Huffines at Crane, Mo., and while on parole he stole two guns and killed some geese and his sponsor turned him in and they came after him and took him back and after staying two or three months, he ran off and has been bumming freight trains till we located him in Springfield, and drove up there and apprehended him and brought him back to Galena and locked him up and phoned to Boonville and notified them, and they said the age he is now, he would have to be sent to the Algoa Farm, and that he would have to be resentenced, so I asked Judge Gideon about it and he advised me to explain the matter to you, and ask your advice.



Mr. I. H. Coin

-2-

May 2, 1938

We drove 95 miles after him and would like to have pay for it.

I am enclosing their letter for further information to you.

Your early advice will be greatly appreciated."

"Missouri Training School for Boys  
Boonville, Missouri.

Sheriff Stone County,  
Galena, Missouri.

#### Escape Notice

Name Curtis Eaton                      No. 7192  
Alias  
escaped from this Institution 10-14-37  
he was sentenced in the Circuit  
Court of Stone County on 3-13-33  
term five years for the crime of receiving stolen property

#### Description

age 18 height 5-8 weight 175 hair brown  
eyes blue complexion fair build medium  
marks and scars none  
Parents' address Mother Mrs. J. T. Eaton,  
Crane, Mo.  
Please arrest and notify Missouri Training  
School, Boonville, Missouri, at our expense.  
Reward.

Roy E. Stone,  
Superintendent

By J. M. Highfill "

The Missouri Training School for Boys was formerly known as the "Missouri Reformatory", and most of the sections under the general law of the Revised Statutes of Missouri, 1929, refer to the now known Missouri Training School for Boys as the Missouri Reformatory or the Missouri Reform School for Boys. In Session Laws of Missouri, 1933, page 331, Section 8345, reads as follows:

"The institution heretofore known as the 'Missouri Reformatory', located at Boonville, Missouri, shall continue to be maintained and shall hereafter be designated as the 'Missouri Training School for Boys'; and wherever the words 'Missouri Reformatory' or the words 'Missouri Reform School for Boys', or 'Missouri Training School for Boys' occur in the statutes they shall be held to mean and refer to the 'Missouri Training School for Boys' located at Boonville, Missouri."

And Section 8350, R.S. Mo. 1929, reads as follows:

"Any person under the age of seventeen years, convicted of a crime, the punishment of which, under the statutes of this state, when committed by persons over the age of seventeen years, is imprisonment in the penitentiary for a term of not less than ten years, may be punished in the same manner and to the same extent as provided by the statutes for the punishment of persons over the age of seventeen, or, if a boy, he may be imprisoned in the penitentiary or committed to the Missouri reformatory, or Missouri training school for boys; and any boy under the age of seventeen years

convicted of any other felony, either upon plea of guilty or upon trial, may be committed to the Missouri reformatory or Missouri training school for boys. Any boy under the age of seventeen years convicted of a misdemeanor in any court or (of) record, either upon the plea of guilty or upon trial, may, in the discretion of the court, be committed to the Missouri reformatory, or Missouri training school for boys. No boy under seventeen years of age convicted of a felony shall hereafter be committed to the county jail as a punishment for such offense. Any court having criminal jurisdiction, in which any male person, between seventeen and twenty-one years of age, shall, upon a plea of guilty, or by the verdict of a jury, be convicted of a felony and his punishment assessed at imprisonment in the penitentiary, may, in its discretion, at the same term at which such plea of guilty is entered or conviction occurs, and before such person is transferred to the penitentiary, commute the punishment to confinement in the Missouri reformatory for such term as the court may deem proper, but not for a longer time than that fixed in the sentence to the penitentiary; but such court shall first ascertain and determine that said conviction or plea of guilty is for the first offense, and that the previous conduct, habits and associations of the person so convicted warrant such commutation. All commitments of boys under the age of seventeen to the Missouri reformatory, the Missouri training school or the penitentiary shall be made by the juvenile division of the circuit court."

By this Section 8350, supra, the legislature has provided that any male person under seventeen years of age who is convicted of a felony punishable by imprisonment for a term in excess of ten years in the penitentiary, may be punished as any person over the age of seventeen years, or, if a boy, he may be imprisoned in the penitentiary or Missouri Training School for Boys, and the section also provides that any boy under the age of seventeen years, who is convicted of any other felony, may be committed to the Missouri Training School for Boys. This section also provides that any boy convicted of a misdemeanor may, in the discretion of the court, be sentenced to the Missouri Training School for Boys.

We find no provision of the Laws of Missouri which prohibits the legislature from designating the place of imprisonment for the violation of a crime. In the case of State v. Walker, 309 Mo. 103, l.c. 111, the Court said:

"The purpose of the act of the legislature establishing the reformatory was to segregate youthful offenders and free them from associating with habitual criminals."\* \* \* \* \*

According to the record of Curtis Eaton as furnished you by the Missouri Training School for Boys, he was convicted of a felony while he was under the age of seventeen years. Under Section 8350, supra, he is still an inmate of the Missouri Training School for Boys for the reason that he has not been lawfully discharged or transferred as hereinafter set out.

Section 8475, R.S. Mo. 1929, reads as follows:

"Transfers may be made under the following conditions:

a. As soon as the construction of the intermediate reformatory is to be under-

taken, or as soon as its agricultural or industrial activities require laborers, the commissioners of the department of penal institutions shall have power, with the consent of the governor to transfer to the tract of land upon which the intermediate reformatory is to be located any or all inmates of the Missouri reformatory at Boonville and of the Missouri penitentiary, who at the time of their last conviction were between the ages of seventeen (17) and twenty-five (25) years and who are serving their first sentence for conviction of a felony." \* \* \* \* \*

The same section further provides as follows:

"\* \* \* \* \* It is further provided, that if in any case it shall be found by the department of penal institutions and the governor of this state, that a prisoner confined in the Missouri penitentiary or the Missouri reformatory at Boonville, has been improperly sentenced to either of these institutions, and that such prisoner should have been sentenced to the intermediate reformatory, such prisoner may, with the consent of the governor, be transferred to the intermediate reformatory, to be and become an inmate therein, subject to the rules and discipline of such reformatory; and it shall be the duty of the general superintendent of said reformatory to receive such prisoner into said reformatory as may be so transferred, and properly care for such prisoner therein until such time as such

prisoner may be lawfully paroled or discharged therefrom. In like manner, transfers may be made from the Missouri reformatory at Boonville to the intermediate reformatory of any offender who, subsequent to his commitment, shall be shown to their satisfaction to have been, at the time of his conviction seventeen years or more of age, but less than twenty-five and for the first time convicted of a felony. In case of any transfers herein set forth the convict is not to remain under the custody of the department of penal institutions for a longer time than that fixed in the original sentence."

Under this section it provided that boys who at the time of their last conviction were between the ages of seventeen and twenty-five years and who were serving their first sentence for conviction of felony in the Missouri state penitentiary or in the Missouri reformatory at Boonville could be transferred to the intermediate reformatory at Algoa. As you notice this section only applies to boys over seventeen. Also this section provided the procedure for transfer of boy prisoners when there was a mistake made in their age at the time of their last conviction and had been improperly sentenced, the section provided for a procedure to correct the improper sentence by removing the boy prisoners from the Missouri Reformatory at Boonville to the Missouri Penitentiary or from the Missouri Penitentiary to the Intermediate Reformatory at Algoa.

In the case of Curtis Eaton as set out in your request, he was under seventeen years of age at the time of his last conviction and cannot serve his time anywhere except at the Missouri Training School for Boys.

CONCLUSION

It is, therefore, the opinion of this department that Curtis Eaton can only serve the unexpired term of his conviction as set out in the report of the Missouri Training School for Boys and cannot be resentenced to Algoa under any circumstances on the crime that he was convicted of before he was seventeen years of age.

In answer for your request as to payment for services rendered in the apprehension of Curtis Eaton, will say that Section 8355, R.S. Mo. 1929 reads as follows:

"It shall be the duty of every sheriff, deputy sheriff, constable or marshal, and every officer and employe of such reformatory, to arrest, with or without warrant, any person who shall have escaped from such institution and return him thereto, and such officer, except officers and employes of the institution, shall receive such compensation as shall be allowed by law for like services rendered and shall be paid out of any fund in the treasury of such institution not especially appropriated."

As you notice this section states that the sheriff shall receive such compensation as shall be allowed by law for like services rendered. In construing this section, one must refer to Section 8357, R.S. Mo. 1929, part of which reads as follows:

"\* \* \* \* The sheriff, marshal or other person charged with the delivery of any person to the re-

reformatory shall be allowed the necessary traveling expenses of himself and such person, and a per diem of two dollars for the time actually occupied in taking such person to said reformatory and in returning therefrom" \* \* \* \* \*

In other words, as set out in Section 8355, supra, the compensation of returning a fugitive to the Missouri Training School for Boys is "like service" as set out in taking boys to the Missouri Training School for Boys by the sheriff and should receive the same fees for returning fugitives to the Missouri Training School for Boys as the sheriff should receive for taking boys to the Missouri Training School for Boys under original sentence.

"Like" as used in the Revised Statutes of the United States, Section 847, providing that for issuing any warrant or writ and for any other service, the United States Commissioner shall receive the same compensation as is allowed to clerks for "like services", does not mean "identically with", but includes those services of clerks which bear a substantial resemblance to the duty performed by the commissioner. The phrase should receive a reasonable construction. U.S. v. Wallace, 6 Supreme Court, 408, 409, 116 U.S. 29, L. Ed. 675.

Under Section 8357, supra, the sheriff who takes a boy to the Missouri Training School for Boys shall be allowed the necessary traveling expenses of himself and such person, and a per diem of two dollars (\$2.00) for the time actually occupied in taking such person to said reformatory and in returning therefrom, to be paid out of any fund in the treasury of such institution not especially appropriated.

Under Section 8357, supra, fees are allowed the sheriff and would also require a copy of a commitment or warrant upon which the cost and fee would be endorsed, but for the

May 2, 1938

return of the fugitive from the Missouri Training School for Boys, it is unnecessary to have a warrant or any other authority and the compensation for services rendered shall be paid out of any fund in the treasury of such institution not especially appropriated. In order to receive this fee, it will be necessary for the sheriff to render an itemized account against the Missouri Training School for Boys.

CONCLUSION

It is, therefore, the opinion of this office that Curtis Eaton as described by the record of the Missouri Training School for Boys, must be returned to the Missouri Training School for Boys, and the sheriff shall be allowed two dollars (\$2.00) per day for the time actually occupied in taking such boy to said reformatory and in returning therefrom, which shall be paid out of any fund in the treasury of said institution not especially appropriated. The sheriff is also entitled and shall be allowed the necessary traveling expenses of himself and such boy.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
(Acting) Attorney General

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