

PENAL INSTITUTIONS -- Parole Board may investigate and recommend for a parole at any time after sentence is pronounced and before sentence is finally completed.

July 5, 1938.

Honorable Frank G. Harris, Chairman
Board of Probation and Parole
Jefferson City, Missouri

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Dear Governor:

We acknowledge your request for an opinion dated June 28, 1938, which reads as follows:

"Section 8477, R. S. of Missouri, 1929, relating to the Intermediate Reformatory at Algoa, states as follows:

'Any inmate who should be confined in said reformatory, who shall serve seven-twelfths of the time for which he may have been sentenced in an orderly and peaceable manner, without having any infractions of the rules of the reformatory or rules of the same recorded against him, shall be eligible for making application for parole and shall be given a hearing for parole.'

"Keeping in mind, of course, the 1937 Act of the Legislature relating to probation and parole, I would be pleased to have your opinion as to whether or not the Board of Probation and Parole created under the new act is authorized to give to an applicant for parole confined at Algoa a hearing and a recommendation for parole at any time before applicant has served seven-twelfths of the time for which he may have been sentenced."

Laws Mo. 1937, page 400, Section 2, reads as follows:

"There is hereby created and established a Board of Probation and Parole. The powers and duties relative to paroles, commutations of sentence, pardons, and reprieves, now vested in the Commissioners of the Department of Penal Institutions and the Intermediate Reformatory Parole Board are hereby vested in the Board created and established by this Act. ** "

Laws Mo. 1937, page 402, Section 5, reads as follows:

"The Board of Probation and Parole shall have authority and it shall be its duty to study prisoners committed to State correctional and penal institutions to select prisoners to be recommended to the Governor for parole, commutation of sentence, or pardon; *** The Board may adopt rules and regulations relative to the eligibility of prisoners for parole. *** "

Laws Mo. 1937, page 403, Section 10, reads as follows:

"Upon request of any peace officer or upon its own motion, the Board may make an investigation of any person convicted of a felony for the first time for the purposes of probation before execution of sentence and may make recommendations concerning probation to the trial court or the judge thereof, the Board, and the Governor. *** "

Laws Mo. 1937, page 403, Section 11, reads as follows:

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" All Acts and parts of Acts in conflict herewith are hereby repealed."

CONCLUSION

Section 8477, R. S. Mo. 1929, as quoted in your request, is not in conflict with the provisions of the 1937 probation and parole law, and it is our purpose to construe said Section with the 1937 probation and parole law, so that both be given force and effect.

In our opinion to you of June 25, 1938, we held that pursuant to Section 8477, supra, there is a legal duty upon the present Parole Board to give qualified Intermediate Reformatory inmates a parole hearing after they have completed seven-twelfths of their sentence.

The Board of Probation and Parole, under the 1937 Act, although empowered to make rules on eligibility of prisoners for parole, cannot legally make a Board rule in conflict with this Legislative seven-twelfths rule, which favors orderly and peaceful Reformatory inmates. Construing the 1937 law, supra, together with Section 8477, supra, the Board of Probation and Parole is under no legal restraints by virtue of Section 8477, supra, from investigating at any time before execution of sentence, the case of any person sentenced to the Intermediate Reformatory, for the purpose of recommending probation. The Legislature has provided that the Board's investigating and recommending jurisdiction begins on sentence. This means that the Board's investigating and recommending powers start even before incarceration in the Reformatory, and said powers continue at all times until the sentence is finally and completely executed. The Legislature, by the 1937 Act, intended such procedure by the language of the Act, and the Legislature intended the repeal of any procedure contrary to the language of said Act.

We are not holding that Section 8477, supra, is repealed, as we believe our construction of Legislative intent reasonably shows that there is no repugnancy in the law.

Respectfully submitted

APPROVED:

WM. ORR SAWYERS
Assistant Attorney General