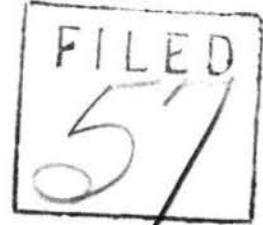


PENAL BOARD: No statutory reward payable for the recovery of escaped convicts who are found dead.

August 25, 1938



Hon. J.E. Matthews, Director
Department of Penal Institutions
Jefferson City, Missouri

Dear Sir:

We acknowledge your request for an opinion dated August 16, 1938, which reads as follows:

We would like very much for you to give us an opinion relative to paying a reward for an inmate, who escaped from the Intermediate Reformatory, at Algoa, and was found floating in the river.

On Wednesday, June 15th, inmate Charles Campbell, Register No. 2703, escaped from the Reformatory while at work at the rock crusher. On June 18th, the body of this inmate was taken from the Missouri River, at Gasconade, Missouri, by Mr. Royal T. Tate, an employee of the United States Engineering Department at Gasconade. Positive identification was made by the comparison of fingerprints.

The Board does not know whether this reward should be paid since Section 8500 of the 1929 Statutes states 'Whenever a convict shall escape from the Intermediate Reformatory it shall be the duty of the Board to take all proper measures for the apprehension of such convict and for that purpose it shall offer to pay a reward not exceeding \$50.'

Under this section of the Statutes, it is not clear to us whether a body found floating in the river was apprehended."

Section 8437, R.S. Missouri, 1929, dealing with the penitentiary, provides as follows:

"Whenever any convict shall escape from the penitentiary, it shall be the duty of the board to take all proper measures for the apprehension of such convict; and for that purpose it shall offer to pay a reward, not exceeding one hundred dollars, if such convict be apprehended outside of Cole county, and twenty-five dollars if such convict be apprehended in Cole county, for the apprehension and delivery of such convict; such reward shall be chargeable to the state."

Section 8500, R.S. Missouri, 1929, dealing with the Intermediate Reformatory reads exactly as quoted in your letter.

Our opinion must turn on the legislative intent as expressed by words and phrases of said statutes. What did the legislature intend in providing a reward for the apprehension of escaped convicts?

The Missouri penal institutions are maintained for the confinement and punishment of offenders of the criminal code. When one who escapes a penal institution is running at large, this convict not only defeats the ends of justice, but while at large, is a threat to the peace and order of society. For this reason, the legislature has authorized the penal board to take measures for the apprehension of an escaped convict, even to the offer of a reward, hoping to incite a diligent search.

The word "apprehension" as used in connection with criminals and these reward statutes is defined by Noah Webster as follows:

"Seizure; seizing or taking by legal especially criminal process; arrest; as the felon, after his apprehension, escapes."

In the case of *Cummings v. Clinton County*, 181 Mo. 162, 1.c. 171, 99 S.W. 1127, the court said:

"It is true that the words used in the statute are "apprehension and arrest", while in the reward paper, the word "apprehension" alone is used, but their meaning is substantially the same and it is generally so understood."

Criminal process cannot be served or execution run on a dead body. A dead body cannot be arrested. The penal board could have no interest in the dead body of a convict in performing their duties. Dead bodies floating in the river belong to the relatives or friends or are properly turned over to the State Anatomical Board.

Section 9129, R.S. Missouri, 1929, provides as follows:

"Superintendents or wardens of penitentiaries, houses of correction and bridewells, of hospitals, insane asylums and poorhouses, and coroners, sheriffs, jailers, city and county undertakers, and all other state, county, town or city officers in whose custody the body of any deceased person, required to be buried at public expense, shall be and are hereby required immediately to notify the secretary of the board of distribution, whenever any such body or bodies come to his or their possession, charge or control, and shall thereafter dispose of such body or bodies, as the secretary of the state board may direct: Provided, that at any time before said body or bodies have actually been distributed, as provided in this article, any relative or friend

of any such deceased person or persons, shall have the right to take and receive the same from the possession of any person in whose charge or custody it may be found, for the purpose of interment; Provided, that when a claim is made for such body or bodies by any person, not a relative of such deceased person or persons, the expense of the interment shall be borne by the person making such claim. The school or college securing such body shall pay all necessary expense incurred in the delivery thereof, including cost of notice to secretary, which notice shall be by telegraph, when necessary. A correct record of all such bodies, name and date of death, shall be kept in a book kept for that purpose with the county clerk of the county in which such person died, or the city health commissioner of St. Louis city, and such record must be furnished said county officer by person or persons reporting said bodies to the state anatomical board."

To be entitled to recovery of a reward for the apprehension of a criminal, one must establish a substantial compliance with all the conditions of the offer, and in *Smith v. Vernon County*, 188 Mo. 501, l.c. 506, 87 S.W. 949, the court said:

"To be entitled to recovery, one claiming a reward for the return of lost or stolen goods, or the mere apprehension, or the apprehension and conviction of a criminal, or for information leading to either, must establish his substantial compliance with all the conditions of the offer of reward."

August 25, 1938

CONCLUSION

We are of the opinion that the recovery of a dead body floating in the river which turns out to be a body of an escaped convict upon whom a reward was offered for his "apprehension" is not a substantial compliance with the conditions of the offer as authorized by the legislature. Under such circumstances, the reward cannot be legally paid because the death of the offender made it a physical impossibility to arrest him and bring him to justice.

Respectfully submitted,

WM. ORR SAWYERS
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APPROVED By:

J.E. TAYLOR
(Acting) Attorney General

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