

PAROLES: Information obtained by Parole Officer privileged information; other data is public record.

July 11th, 1939.

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

Dear Governor Harris:

This will acknowledge receipt of
your letter of recent date which reads as
follows:

"The Board of Probation and Parole
desires your opinion upon the
following questions, towit:

"SECTION 8520, R. S. '29 pro-
vides in part, as follows:
"all records, hearings and pro-
ceedings of said board shall
be public and open to the in-
spection of the public."

"SECTION 9, PAGE 403, Laws of
Missouri, 1937, provides as
follows: "Information and
data obtained by a probation
or parole officer appointed
under the provisions of this
Act in the discharge of his
official duty, shall be privi-
leged information, shall not
be receivable in any court, and
shall not be disclosed directly
or indirectly to any one other

than the members of the Board of Probation and Parole and judges entitled under this Act to receive reports, unless and until otherwise ordered by said Board or judge."

"SECTION 11, Page 403, Laws of Missouri, 1937, provides as follows: "All Acts and parts of Acts in conflict herewith are hereby repealed."

"(1) What part, if any, of Section 8520 above referred to is repealed by Section 9, page 403, Laws of Missouri 1937?

"(2) In the event a probation and parole officer obtains from a circuit judge a statement relating to an application for parole of an inmate sentenced by the judge from whom the statement is obtained, and after obtained the statement is attached to his, the probation and parole officer's, report, or if an oral statement, is written into his pre-parole report, is this statement of the circuit judge privileged?

"(3) In the event a member of the Board of Probation and Parole or its secretary writes a circuit judge for a statement relating to an application for parole of one sentenced by the circuit judge of whom the request is made and the circuit judge complies with the request and sends a written statement to the Board of Probation and Parole, is

this statement of the circuit judge privileged?

"(4) To what extent, if at all, are the contents of the file of an applicant for parole privileged or confidential?"

Section 8323, R. S. Mo. 1929, transferred generally all powers and duties theretofore vested in and required of the State Prison Board to the Commissioners of the Department of Penal Institutions. Among the powers and duties of the State Prison Board was the duty and power to investigate all applications for executive clemency coming before the Governor and to make a written report on each case with its recommendations. (See Art. 8, Chap. 44, R. S. Mo. 1929). This duty and power is somewhat enlarged and detailed in Section 5, page 402, Laws of Missouri, 1937.

Section 8330, R. S. Mo. 1929, specifically transferred to the Commissioners of the Department of Penal Institutions the power and duty to investigate applications for executive clemency, said section reading as follows:

"With reference to investigating fully the merits of all applications for executive clemency properly coming before the governor; the making of a written report for the information of the governor of the finding of facts in such cases, together with recommendations thereon, the commissioners of the department of penal institutions shall have and exercise all the rights and powers, and

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perform all the duties and functions, heretofore exercised and performed by the state prison board as set forth and defined in article 8 of this chapter, and such other powers and duties with reference thereto as may be authorized by law."

An Act found at page 400, Laws of Missouri, 1937, created a board of Probation and Parole. Section 2 of said Act provides 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. Said Board shall be deemed a continuation of the Department of Penal Institutions and the Intermediate Reformatory Parole Board in so far as the Commissioners of that Department and the Intermediate Reformatory Parole Board are empowered to act in relation to investigations, paroles, commutations of sentence, and pardons, and all matters pending before such Commissioners and the Intermediate Reformatory Parole Board in connection with paroles,

commutations of sentence, and pardons shall be carried on and completed by the Board created in this Act."

Section 11 of said Act of 1937 provides that all acts and parts of acts in conflict with said act were repealed.

It will, therefore, be seen that all powers and duties relating to pardons and paroles which were originally vested in and required of the State Prison Board and subsequently vested in and required of the Commissioners of the Department of Penal Institutions, are now vested in the Board of Probation and Parole, created by the Act of 1937, supra, save and except such powers and duties as might be in conflict with the provisions of said 1937 Act. One of the duties originally required of the State Prison Board was set forth in Section 8517, R. S. Mo. 1929, in the following language:

"It shall be the duty of said board to keep and preserve the files and records concerning all applicants for executive clemency filed with said board or with the governor, and to keep a trial docket of all such applications."

We do not find anything in the above section 8517, which is in conflict with the provisions of the 1937 Act, supra, and consequently, said section 8517 is still binding on the Board of Probation and Parole.

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Section 8520, R. S. Mo. 1929, provides as follows:

"Said board shall have power to make all needed rules and regulations concerning the forms of applications, and manner of applying for executive clemency, subject to the approval of the governor, shall furnish blank forms free of charge, upon request, to any person desiring same; and all records, hearings and proceedings of said board shall be public and open to the inspection of the public."

Is there anything in the Act of 1937, supra, which conflicts with the underscored portion of Section 8520, supra?

Section 9 of the 1937 Act provides as follows:

"Information and data obtained by a probation or parole officer appointed under the provisions of this Act in the discharge of his official duty, shall be privileged information, shall not be receivable in any court, and shall not be disclosed directly or indirectly to any one other than the members of the Board of Probation and Parole and judges entitled under this Act to receive reports, unless and until otherwise ordered by said Board of Judge. All public officers are hereby required to assist said Board and its

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parole and probation officers in effectuating paroles and probation, and shall permit said Board or its parole and probation officers to have free access at reasonable times to all public records."

Section 8520, supra, provides that all records of the Board shall be public and open to the inspection of the public. However, Section 9 of the 1937 Act provides that information and data obtained by a probation or parole officer in the discharge of his official duty shall be privileged information and shall not be revealed to anyone except the Board of Probation and Parole, or to the judges entitled to receive reports, unless and until otherwise ordered by the Board or Judge. There is therefore a conflict between said Section 8520 and Section 9 of the 1937 Act in so far as information obtained by probation or parole officers in the discharge of their duties is concerned, and the 1937 Act must therefore prevail as to this information. As to all other records of the Board of probation and parole, Section 8520 still prevails, and such other records are public. Information obtained by the Board itself or by its Secretary, or data furnished by applicant for parole are not included in the privileged information mentioned in Section 9 of the 1937 Act, and they are therefore, governed by Section 8520, R. S. Mo. 1929.

CONCLUSION

Answering your questions in the order named, it is the opinion of this Department that:

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(1) Unless and until otherwise ordered by the Board of Probation and Parole or the judge to whom such information is given, the data and information obtained by a probation or parole officer appointed under an Act found at page 400, Laws of Missouri, 1937, in the discharge of his official duties, is privileged. All other records of the said Board of Probation and Parole are public and open to public inspection in accordance with Section 8520, R. S. Mo. 1929.

(2) Information obtained by a probation or parole officer from a circuit judge and filed with the Board of Probation and Parole would be privileged until and unless otherwise ordered by said Board.

(3) Information and data obtained by the Board of Probation and Parole, or by its secretary, from a circuit judge who had originally sentenced the applicant for a parole would not be privileged.

(4) The contents of the file of an applicant for parole are privileged only to the extent of the data and information therein contained which was obtained by a probation or parole officer in the discharge of his official duties, and not to this extent if the Board of Probation and Parole has ordered otherwise.

Very truly yours,

APPROVED:

HARRY H. KAY,
Assistant Attorney General.

J. E. TAYLOR
(Acting) Attorney General