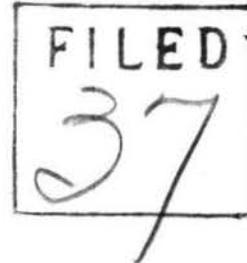


GOVERNOR:) Governor can issue pardons and paroles anytime
PARDONS & PAROLES:) after conviction - does not have to wait a
year after convict has been discharged.

August 4, 1939

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



Dear Governor:

This Department is in receipt of your letter of July 24th wherein you present a question relative to restoration of citizenship by the Governor. That portion of your letter which relates to the facts is as follows:

"Under a rule which has been followed by the Governor, a convict on parole is not eligible to have his or her citizenship restored until the lapse of one year from the expiration of the time to which the convict is required to report.

"When and in what cases, under the law, may the Governor restore citizenship?

"I have two cases in mind. One of them has been out on parole over three years, but under the terms of the parole he is required to report. He is keeping the terms of his parole and has a good business, but he cannot obtain insurance on the property he handles because of the fact that his citizenship has not been restored. I do not recall just how long the second I have in mind has been out under parole, but he is complying with the terms of his parole and is engaged in the mercantile business, succeeding well, but can obtain no insurance because of the fact that he is deprived of his citizenship."

There are a number of statutes relating to the power of the Chief Executive to grant paroles and pardons. Some of the statutes are apparently in conflict. Some relate only to crimes committed under certain articles and chapters. As for instance, Section 8442, R. S. Mo. 1929, refers to the three-fourths rule and contains the expression, "and in such case no pardon from the Governor shall be required." Section 4172, R. S. Mo. 1929, refers to the character of crimes which shall constitute a forfeit of citizenship and providing for civil disabilities; also exempting convicts under the age of twenty years; and providing that the Governor may remove the civil disability any time after one year from the date of conviction. Under Article 4, Chapter 90, R. S. Mo. 1929, Sections 12970 and 12971 refer to the effect of a pardon and when citizenship is not lost.

As stated before there are a number of special statutes under each article wherein conviction constitutes forfeiture of citizenship. But regardless of any conflict in the statutes we think the real power of the Chief Executive to grant pardons and paroles is contained in the Constitution. Section 8 of Article 5, Missouri Constitution, provides as follow s:

"The Governor shall have power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment, upon such condition 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. He shall, at each session of the General Assembly, communicate to that body each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the commutation, pardon or reprieve, and the reason for granting the same."

The general section governing the power of the Chief Executive to grant pardons is practically in the same language as the Constitution, to-wit, Section 3798, R. S. Mo. 1929, which 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."

We herewith refer to certain decisions construing the power of the Chief Executive to grant pardons and paroles.

In the early case of State v. Sloss, 25 Mo. 291, the court states that the pardoning power belongs exclusively to the executive department of the government and cannot be exercised by the legislative department.

The power of the Governor to grant paroles just the same as pardons, prior to the enactment of past laws and the recent acts governing paroles, was determined by a decision in the case of State v. Asher, 246 S. W. 911, 1. c. 913, as follows:

"No provision is made either in the Constitution or the statute for 'paroles' by the Governor. The question therefore depends on the meaning of word 'parole,' used in reference to the discharge of prisoners from the penitentiary.

"In 29 Cyc. 1562, a parole is defined as:

"A form of conditional pardon, by which the convict is released before the expiration of his term, to remain subject, during the remainder thereof, to supervision by the public authority and to return to imprisonment on the violation of the condition of the parole."

"In the case of *Fuller v. State*, 122 Ala. 32, loc. cit. 37, 26 South. 146, 45 L. R. A. 502, 82 Am. St. Rep. 1, the court had before it a similar question. The Constitution of Alabama provides that 'the Governor shall have power * * * after conviction, to grant * * * pardons.' The court said:

"It is the settled law that this grant includes power to grant conditional pardons, the condition to be either precedent or subsequent, and of any nature so long as it is not illegal, immoral, or impossible of performance; and that a breach of the condition avoids and annuls the pardon.'

"To the same effect was the holding in *Kennedy's Case*, 135 Mass. 48. Chief Justice Marshall in the case of *U. S. v. Wilson*, 7 Pet. (U. S.) 160, 8 L. Ed. 640, defined a pardon as:

"An act of grace, proceeding from the power invested with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed.'

"The power to pardon includes the power to parole (In re *Conditional Discharge of Convicts*, 73 Vt. 414, 51 Atl. 10, 56 L. R. A. 658.

"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 in him by the Constitution and statute with respect to the issuance of conditional pardons. Moreover, it must be understood that section 3702, supra, does not within itself provide for the conviction of a

defendant, but simply provides severer punishment for the crime charged if convicted. State v. Collins, 266 Mo. 93, 180 S. W. 866; State v. Levy, 262 Mo. 181, 170 S. W. 1114."

Formerly, as stated in the early case of State v. Woolery, 29 Mo. 300, and before our present Constitution, the Chief Executive even had the power to grant a pardon before conviction as well as after conviction. Reverting to the section of the Constitution relative to the Chief Executive's power to pardon, we think the case of Ex parte Jacobs v. Crawford, 308 Mo. 302, l. c. 305, which discusses the same, shows conclusively the broad powers of the Chief Executive, as follows:

"The power of the Governor in respect to pardons and paroles is declared in Section 8, Article V, of our Constitution. The first sentence of said section reads 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 condition 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.'

"It will thus be seen that the Governor has the right to fix the conditions when he paroles a convicted person. All the power that the General Assembly has in the matter is to legislate concerning the manner of applying for pardons. Section 4144, Revised Statutes 1919, merely reiterates the language of the Constitution concerning the power of the Governor to grant pardons upon such conditions and under such restrictions as he may think proper.

"In a very recent case (In Matter of the Petition of Jasper Mounce for Writ of Habeas Corpus, 307 Mo. 40, decided February 2, 1925), where this court had under consideration the effect upon the term of imprisonment of time elapsed while defendant was out under parole by the trial court, we said:

"A parole is a matter of grace or favor to a convicted defendant and, when he accepts such parole, he does it subject to all the provisions fixed by the statute and subject to all other conditions which may be imposed upon him by the authority granting such parole, which are not illegal, immoral or impossible of performance. Such, by all the authorities, is the rule where a parole or conditional pardon has been granted by the executive or other constitutional pardoning power and the rule applies as fully and as reasonably to paroles by trial courts under our statute."

The effect of the constitutionality of the three-fourths rule provision is discussed in the case of *Ex Parte Collins*, 94 Mo. 22, l. c. 25:

"It may be conceded that he became entitled to whatever benefit an observance of those conditions gave him, but what benefit was that? Simply this: that he became entitled to be recommended to the Governor as a fit subject of pardon. This benefit he has received. His right to a pardon does not lie in the terms of the statute. Nor does the amendment of section 1 aforesaid, by the matter contained in section 6533, at all affect his case, since that relates only to those who have served three-

fourths of the time for which they were sentenced. The expiration of such a period cannot be affirmed of one sentenced for life. Equitably, the prisoner is perhaps entitled to his discharge; but that is a subject which lies entirely in the discretion of the executive. By virtue of the writ which has been issued, we can only make inquiry into his legal rights in the premises."

Conclusion.

In view of the provisions of the Constitution, the statutes and the decisions herein mentioned and quoted above, we offer the following conclusion in answer to your question, "When and in what cases, under the law, may the Governor restore citizenship?"

We think that the Governor has power to restore citizenship to any person after conviction for any and all offenses, except treason and impeachment, upon such conditions and with such restrictions and limitations as he may think proper. The rule which the Chief Executive has been following, namely, that a convict on parole is not eligible to have his or her citizenship restored until the lapse of one year from the expiration of the time to which the convict is required to report, we think is such a rule that the Chief Executive has a right to follow. The granting of a parole or pardon is purely within his discretion. There is no writ or remedy which can compel him to grant a pardon or parole to anyone. However, it may be treated by the Chief Executive simply as a rule, as it is our opinion he has the power to grant a pardon or parole at any time he may see fit after conviction. He may parole or pardon before the convicted person has entered prison, at any time after the convicted person has entered prison or at any time after the convicted person has been released from prison. The granting of a parole or pardon is a matter of grace upon the

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part of the Chief Executive. The only authority the General Assembly has in the matter is to legislate concerning the manner of applying for pardons.

Respectfully submitted,

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APPROVED:

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