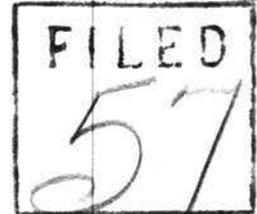


PENAL INSTITUTIONS:

Reprieves for specified periods are part of the Governor's Constitutional prerogative.

June 3, 1939



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

Dear Sir:

I acknowledge your request for an opinion dated May 26, 1939, which reads as follows:

"Attached is a copy of a letter from Mr. R. E. Stone, Superintendent of the Missouri Training School for Boys, Boonville, requesting that the Board give Christmas furloughs to deserving inmates in that Institution.

"We have had this under advisement for sometime and, as yet, have not taken any action as we do not know whether this will conflict with any statute or whether we have the authority to grant these furloughs since the inmates of this Institution are sentenced and cannot be released until they have served their time or have been paroled by the Board of Probation and Parole. Therefore, we would be glad to receive an opinion from your office."

Article 5, Section 8 of the Mo. Constitution provides:

"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.

Pursuant to the above constitutional provisions, the Governor is authorized to grant "reprieves" for crimes, except treason and cases of impeachment. 20 R. C. L. page 522 defines reprieve as follows:

"A reprieve, from reprendre, to take back, is the withdrawing of a sentence for an interval of time, whereby the execution is suspended. It is merely the postponement of the sentence for a time. It does not and cannot defeat the ultimate execution of the judgment of the court, but merely delays it. *
* * * * *

In the case of State v. Sloss, 25 Mo. 291, l.c. 294, when there was an attempted legislative encroachment on the constitutional prerogative of a Missouri Governor to grant reprieves, pardons and commutations, the Supreme Court held such encroachment as unconstitutional and said:

"Although questions have sometimes arisen whether a power properly belonged to one department of government or another, yet there is no contrariety of opinion as to the department of the government to which the power of pardoning offenses properly appertains. All unite in pronouncing it an executive function. So the framers of our constitution thought, and accordingly vested the power of pardoning in the chief executive officer of the state."

June 3, 1939

Under the Missouri Constitution, statutes and judicial decisions, all punishment for crime, after commitment to a Penal Institution, must be executed in strict compliance with the lawful judgment and sentence of the court, except where the Governor shows executive clemency by reprieve, commutation or pardon. The cases hold that the prerogative of clemency, after commitment to a Penal Institution, is exclusively an executive power, not to be infringed upon by any legislative scheme of clemency.

The framers of the Constitution saw fit to give this exclusive prerogative to the Governor, intending to alleviate occasional inhuman treatment of convicts in a rigidly enforced criminal code, which provides penal servitude in a Penal Institution.

This department is of the opinion that the Governor of Missouri, under his exclusive prerogative to grant reprieves, except for treason and cases of impeachment, can grant a reprieve, to any inmate committed by the courts to any Missouri Penal Institution, for a specified period of time, whenever in his discretion he feels that such a reprieve should be granted. The Christmas Holiday Season could be an occasion for an executive reprieve for a specified period of time.

Respectfully submitted,

WM. ORR SAWYERS
Assistant Attorney-General

APPROVED:

(Acting) Attorney-General

WOS/ww