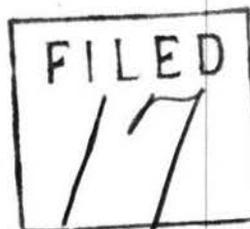


PENAL INSTITUTIONS: The governor's consent to transfer of a prisoner from the Intermediate Reformatory to the Penitentiary
GOVERNOR'S CONSENT may be given as a part of the governor's revocation
TO TRANSFER : of the prisoner's parole. With such consent, subject to the provisions of said Section 8475b, a prisoner may be so transferred.

June 22, 1940

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Mr. Grover C. Clevenger, Director
Department of Penal Institutions
Jefferson City, Missouri



Dear Sir:

This is in reply to your request for our opinion in your letter dated June 18, 1940, which is in the following terms:

"Attached is a form used by the Governor to revoke conditional commutations issued to inmates of the Intermediate Reformatory for Young Men (Alcoa Farms).

It is customary for such violators to be transferred from Alcoa to the Penitentiary to complete the unexpired portion of their terms. The transfers are ordered and signed by the Governor after the violators are returned to Alcoa following the revocation.

Near the end of the form, written in red for your convenience, has been inserted the phrase, 'and direct that the unexpired portion of his sentence be served at the Missouri State Penitentiary'. In this way a transfer and revocation could be effected by one document.

Please inform us if this procedure is permissible."

Section 8474, R. S. 1929, Mo. Stat. Ann. page 6625

provides:

"If any male person seventeen years of age and less than twenty-five years of age be convicted of a felony for the first time, and he be not guilty of treason or murder in the first or second degree, or any offense for which capital punishment is provided, the court trying such person may sentence him to the custody of the officials of the intermediate reformatory to be confined at said reformatory for the term prescribed by the statutes of this state and fixed by the court or jury as a punishment for such offense. It shall be the duty of the officials in charge of said reformatory to receive all such convicted persons."

Section 8475, subsection b, R. S. Mo. 1929, Mo. Stat. Ann. page 6226, in part provides:

"The department of penal institutions shall have the power, with the consent of the governor, to transfer to the penitentiary any prisoner who subsequent to his committal to the intermediate reformatory, shall be shown to their satisfaction to have been, at the time of his conviction, twenty-five years of age or over, or to have been previously convicted of a felony; and may also transfer any apparently incorrigible prisoner, whose presence in the reformatory appears to be seriously detrimental to the well-being of the inmates of the institution."

Mr. Grover C. Clevenger

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June 22, 1940

The last quoted statute does not provide by what method the consent of the governor to the transfer shall be given. The giving of such consent as a part of the governor's revocation of the prisoner's parole, as suggested in your letter dated June 18, 1940, would provide a permanent record of such consent over the signature of the governor, and in our opinion is a proper method.

However, it is the Department of Penal Institutions which has the power to direct the transfer, and not the governor. A prisoner, subject to the provisions of said Section 8475b, should be transferred to the State Penitentiary from the Intermediate Reformatory only when the Department of Penal Institutions has made an order therefor, with the consent of the governor. It was so ruled in an opinion of the attorney general dated August 16, 1934 (No. 80) of which a copy is hereto attached. Consistent with the foregoing propositions, and to the end that the giving of the governor's consent may follow the words of the statute, said Section 8475, subsection b, we would suggest that the consent be given in substantially the following terms:

"and hereby give my consent as governor to the transfer of the said _____ from the Intermediate Reformatory to the Missouri State Penitentiary, as provided by Section 8475, subsection b, R. S. Mo. 1929."

CONCLUSION

The governor's consent to transfer of a prisoner from the Intermediate Reformatory to the penitentiary may be given as a part of the governor's revocation of the prisoner's parole. With such consent, subject to the provisions of said Section 8475b, a prisoner may be so transferred.

APPROVED:

Respectfully submitted,

COVELL R. HEWITT
(Acting) Attorney General

LAWRENCE L. BRADLEY
Assistant Attorney General

EH:RT