

CRIMINAL LAW. : Officers of Board of Probation  
: and Parole may not exercise powers  
: of arrest provided by Sec. 9162,  
: R. S. Mo., 1939, as far as judicial  
: paroles are concerned.  
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November 21, 1944

Mr. Donald W. Bunker, Director  
Probation and Parole  
Jefferson City, Missouri

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13

Dear Mr. Bunker:

Your letter of November 6, 1944, is as follows:

"The attached 'Parole and Conditional Commu-  
tation Violation Warrant' is in use by the  
State Probation and Parole Officers. You  
will note that the warrant is in agreement  
with the Provisions of Chapter 48, Article 8,  
R. S. Missouri, 1939, and especially Section  
9162 thereof.'

"The Board of Probation and Parole should like  
to have an opinion from you as to whether this  
type of warrant may be legally used by the  
State Probation and Parole Officers to be served  
against probationers from the Circuit Courts of  
Missouri, if the title of the warrant were to be  
changed to the title of 'Probation Violation  
Warrant,' and if the wording of the warrant were  
to be changed in the following manner in the  
second paragraph:

"Whereas, it appears that \_\_\_\_\_ has  
violated the terms and provisions of his (or her)  
probation from the \_\_\_\_\_; now, there-  
fore, under and by virtue of the authority vested  
in the Board of Probation and Parole of the State  
of Missouri, and its Parole and Probation Officers  
by the provisions of Chapter 48, Article 8, R. S.  
Missouri, 1939 and especially Section 9162 thereof,  
that upon the request of any parole or probation  
officer, all peace officers of this State are  
authorized and required to make arrests and hold  
persons so arrested subject to the order of any  
State Parole or Probation Officer, you are hereby  
requested to arrest the said \_\_\_\_\_  
wherever he (or she) may be found and to hold him  
(or her) subject to the order of said Parole or  
Probation Officer of said Board of Probation and  
Parole issuing this warrant."

Section 9162, R. S. Mo., 1939 provides:

"The parole officers and other employees of the Board shall perform such duties as may be prescribed by said Board. The Board and the parole and probation officers appointed under this article shall have jurisdiction co-extensive with the boundaries of this state, and may make arrests anywhere in the state in the course of their duties under this article. Upon request of the Board or any parole or probation officer, all peace officers of this state are authorized and required to make arrests and to hold a person so arrested subject to the order of the Board or any parole or probation officer."

You will note that the first sentence of this statute provides that "the parole officers and other employees of the Board shall perform such duties as may be prescribed by said Board." Even the last sentence of the section contemplates a parolee who is under the jurisdiction of the Board.

Section 9160 R. S. Mo., 1939 designates the class of parolee over which the Board of Probation and Parole has jurisdiction. It provides:

"The Board of Probation and Parole shall have authority and it shall be its duty to study prisoners committed to State correctional and penal institutions to select prisoners to be recommended to the Governor for parole, commutation of sentence, or pardon; to provide for applications for paroles, commutations of sentence, and pardons; to investigate the merits of such application; to make recommendations to the Governor relative to paroles, commutations of sentence, and pardons; to recommend conditions deemed by them advisable in the case of prisoners whose release on parole, commutation of sentence, or conditional pardon is recommended; to provide for the supervision of persons released on parole or conditional pardon; and to recommend to the Governor the revocation of paroles or conditional pardons when their conditions have been violated. Said Board shall keep and preserve complete files, and records of all prisoners held in or released from state penal and correctional institutions and recommendations made by them relative to such prisoners."

The Board may adopt rules and regulations relative to the eligibility of prisoners for parole. The Board of Probation and Parole may, at the written request of the judge or judges of a court named in Section 1 of this Act, or a board of parole authorized to serve such court, authorize parole officers appointed by said Board to act as probation officers for such court or board of parole."

True the last sentence of this section allows parole officers of the Board to serve the courts as probation officers at their written request. However, the fact that a probation officer may act in a dual capacity could not limit the authority of the courts or extend the authority of the Board.

Section 9156 R. S. Mo., 1939 specifically retains in full force and effect the provisions of Sections 4199 to 4211 R. S. Mo., 1939 which give to the Circuit Courts the power of judicial parole.

True Section 9165 R. S. Mo. 1939, allows the Board to make recommendations to the courts for judicial paroles, however, the section specifically states:

"Such court or the judge thereof upon admitting such convicted person to probation shall retain general jurisdiction over such person and over its judgment and sentence and may at any time revoke said probation and sentence such convicted person for the offense for which he was convicted."

This statute specifically retains all jurisdiction of judicial paroles in the court and therefore, necessarily excludes the Board from any jurisdiction.

Section 9162 supra seems therefore, to be a procedure set up for the use of the Board and its agents and not for the courts. The arrests made by the Board and its agents can only be those "in the course of their duties under this article." The article does not give them jurisdiction over judicial paroles. Sections 4200 and 4201 R. S. Mo., 1939 specifically provide for the procedure

Mr. Donald W. Bunker

-4-

Nov. 21, 1944

for terminating judicial paroles. They were not repealed by the statutes creating and defining the duties of the Board of Probation and Parole.

CONCLUSION.

It is therefore the opinion of this office that agents and parole officers of the Board of Probation and Parole may not exercise the authority relative to ordering peace officers to make arrests as provided by Section 9162, R. S. Mo., 1939 as far as judicial paroles by the courts are concerned.

Respectfully submitted

ROBERT J. FLANAGAN  
Assistant Attorney General

APPROVED:

VANE C. THURLO  
Acting Attorney General