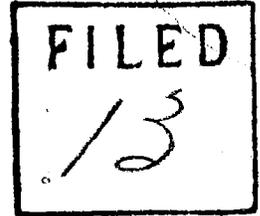


BOARD OF PROBATION
AND PAROLE:

Do not have authority to revoke a parole or conditional commutation, or to rescind the revocation thereof, signed by the Governor prior to July 1, 1946; shall pay expense of returning inmate upon revocation of parole or conditional commutation; has ^{no} authority to make rules regarding final discharge from parole and only Governor can grant commutation.

July 12, 1946



Mr. Donald W. Bunker
Executive Secretary
Board of Probation and Parole
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your recent request for an opinion, based on the following state of facts:

"On July 1, 1946, the Board of Probation and Parole will operate under the law detailed in Senate Bill 347.

"Assistant Attorney General, Jackson, is preparing new forms for the use of the Board in conformance to the new law. With respect to the new law, the Board of Probation and Parole should appreciate your legal opinion relative to the following questions:

"(1) Will the Board of Probation and Parole have the authority (after July 1, 1946) to revoke a parole or conditional commutation signed by the Governor prior to July 1, 1946?

"(2) Will the Board of Probation and Parole have the authority to rescind a revocation of parole or conditional commutation signed by the Governor prior to July 1, 1946?

"(3) With special reference to section 39, line 27, Senate Bill 347; will the Board of Probation and Parole be required to pay

the expenses of returning to the State Correctional Institutions only those parolees who have been paroled and subsequently revoked on order of the Board of Probation and Parole, or will the Board, in addition, be required to return all inmates released on conditional commutation as well as on parole even though the order of release was not signed by the Board of Probation and Parole?

"(4) Will the Board have authority to set the expiration date on parole short of the maximum or 12/12 time? For example, at present, a parolee who received a life sentence reports for five years. This is, in effect, a commutation of sentence in addition to a release from prison on parole, but it is done on a signed order of the Governor. In a similar case could the Board of Probation and Parole, after July 1, 1946, commute the sentence from life to five years from the date of release on parole? If not, the Board would have to recommend a commutation at the end of five years in order to issue a final discharge. The same situation would arise in many other cases of long sentences. (There would seem to be authority for the Board to hold a parolee on parole until the end of the maximum 12/12 time. Also, it would seem that the Board would have no authority to grant a final discharge from parole prior to the full term for which the parolee was originally sentenced.)"

We have answered the questions in the manner in which they are numbered in your request.

1. The Board of Probation and Parole does not have power, after July 1, 1946, to revoke a parole or conditional commutation signed by the Governor prior to that date. Section 9160, R.S. Mo. 1939, gave the former Board the right or power only to recommend revocation to the Governor. Said section is in part as follows:

"The Board of Probation and Parole shall have authority and it shall be its duty to * * * * recommend to the Governor the revocation of paroles or conditional pardons when their conditions have been violated. * * * *"

The Board of Probation and Parole, as designated by Senate Committee Substitute for Senate Bill No. 347, Section 35A, Missouri Revised Statutes Annotated, June, 1946 Pamphlet, Section 8992.35A, page 191, is to carry on the duties of the Board, which was abolished, in any parole matters pending or existing as of July 1, 1946. Said Section 8992.35A is as follows:

"The board created in section 35 of this act shall be deemed to be a continuation of the board of probation and parole in existence immediately prior to the effective date of this act, and all matters pending before that board in connection with paroles of inmates at that time, or before that time, in the penitentiary or the intermediate reformatory, all pre-parole and pre-sentence investigations and all supervision services having to do with prisoners released from or eligible for commitment to said institutions, shall be carried on and completed by the board created in section 35, of this act."

Since the new Board is considered a continuation of the former Board in prior parole matters, and since the former Board had only the power to recommend revocation to the Governor, it would follow that the new Board would not have authority to revoke a parole or conditional commutation signed by the Governor prior to July 1, 1946, but only to recommend its revocation to the Governor.

2. The new Board does not have statutory authority to rescind a revocation of parole signed by the Governor prior to July 1, 1946. The law as set out under question No. 1 applies. There is, however, nothing in the new law (Senate Committee Substitute for Senate Bill No. 347) that would prevent the Board from issuing a second parole to the inmate. Section 39 of this bill gives the Board almost unlimited power and authority in granting paroles, and the pertinent part is as follows

(Missouri Revised Statutes Annotated, June, 1946 Pamphlet, Section 8992.39, page 192):

"The board of probation and parole is hereby authorized to release on parole any person confined in any state correctional institution, except persons under sentence of death. All paroles shall issue upon order of the board and shall be recorded. * * * *"

3. As to the matter of paying the expense of returning inmates released on conditional commutation or pardon, we are unable to find any direct statutory provision as to the expense. However, we think that Section 40 of Senate Committee Substitute for Senate Bill No. 347, Missouri Revised Statutes Annotated, June, 1946 Pamphlet, Section 8992.40, page 193, is broad enough to cover this item. We further think this section would include any request by the Governor to the Board, and when the Governor requests an inmate, who had been placed on conditional commutation or pardon, to be returned to the institution, it would be the duty of the Board to apprehend and return the prisoner and to pay the expense thereof. Section 8992.40 is as follows:

"The board of probation and parole is hereby authorized and it shall be its duty to recommend to the governor for his consideration such inmates as in the opinion of the board may be eligible for pardon or commutation of sentence; or, on request of the governor, the board shall investigate and report to him with respect to any application for pardon, commutation of sentence, or reprieve."

4. In answering question No. 4, your attention is called to the following quotation from Section 39 of Senate Bill No. 347:

" * * * * A parole shall be considered a correctional treatment for any inmate and not an award of clemency. A parole shall not be considered to be a reduction of a sentence or a pardon. * * * *"

Every inmate while on parole shall remain in the legal custody of the institution from which he was released, but shall be amenable to the orders of the board of probation and parole. * * * *"

From the above quotation we are of the opinion that the Board of Probation and Parole does not have authority to discharge a parolee from the conditions of his parole before the expiration of the terms of said parole. In other words, when an inmate is paroled he will remain under the conditions of said parole until the final expiration of the terms thereof, unless said sentence is commuted before that time by the Governor.

The only authority to grant commutations is vested in the Governor under Section 7, Article IV of the Constitution of 1945, which is 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 conditions and with such restrictions and limitations as he may deem proper, subject to provisions of law as to the manner of applying for pardons. The power to pardon shall not include the power to parole."

It necessarily follows that any commutation granted at any time to an inmate or parolee would have to be by the Governor. The Board can only recommend the commutation under Senate Committee Substitute for Senate Bill No. 347, Section 40, supra.

Conclusion.

It is the opinion of this department that the Board of Probation and Parole would not have authority to revoke a parole or conditional commutation, or to rescind a revocation thereof, signed by the Governor prior to July 1, 1946; that it is the duty of the Board of Probation and Parole to return all

Mr. Donald W. Bunker

-6-

parolees, to the proper institution, and to pay the expense thereof when a parole or conditional commutation has been revoked, whether same had been signed by the Board or the Governor; that the Board of Probation and Parole does not have authority to discharge a parolee from the conditions of his parole before the full expiration of the term of his parole, and that only the Governor has power to grant a commutation of sentence. The Board can only recommend such commutation to the Governor.

Respectfully submitted,

W. BRADY DUNCAN
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

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