

STATE BOARD OF : Board of Training Schools loses control of  
TRAINING SCHOOLS : person transferred to adult correctional  
: institution.

June 9, 1948.



Honorable Francis Smith,  
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Dear Sir:

We have received your request for an opinion of this department, which request is as follows:

"The Board of Training Schools of the State of Missouri of which I am a member has directed that I present to you for your interpretation the following questions:

"Under the provisions of Senate Bill 289, subsection (2) of Section 8996 it is provided that our board may, for the purpose of discipline with the approval of the governor transfer any person committed to its custody to any state adult correctional institution. It is further provided that:

"Any such person shall be subject in all respects to the discipline of the adult correctional institution to which he is transferred and shall be entitled to all of the rights provided for persons committed to such institutions \* \* \*

"The section further provides:

"The Board may after hearing release any such person on parole with like effect and under the same circumstances as if he had remained in the custody of the Board."

"Our inquiries as to the above section are as follows: If the Board transfers a person to the state penitentiary at Jefferson City under this section does the Board retain any control whatever over such person except the power to parole?

"The section provides that such person shall be subject in all respects to the discipline of the adult correctional institution. In the parole

power which is the last sentence in the subsection it is stated that the Board may release upon parole 'as if he had remained in the custody of the Board'. Is that a direct implication that he is no longer in the custody of the Board after the transfer?

"Does the Board have the power, for example, to re-transfer one of these persons back to Boonville after he has been transferred to the penitentiary? When the time comes for the person to be released, for example, on the termination of his sentence, is he to be discharged at Boonville or discharged at the state penitentiary to which he has been transferred, or does the Board have any option?

"Further, under the provision 'shall be entitled to all of the rights provided for persons committed to such institutions', does a Boonville charge after being transferred to the state penitentiary come under their ninth-twelfths rule and other rules applying to ordinary inmates of the penitentiary?

"The Board is interested in your interpretation of this particular sub-section."

Section 8996 (2) of Senate Bill 289, 64th General Assembly, reads in full as follows:

"The board may, for the purpose of discipline, with the approval of the Governor, transfer any person committed to its custody, to any state adult correctional institution. Any such person shall be subject in all respects to the discipline of the adult correctional institution to which he is transferred and shall be entitled to all of the rights provided for persons committed to such institutions, except that no person committed to the Board for an indeterminate period of time shall be confined in such adult correctional institution after reaching the age of twenty-one years. The Board may, after hearing, release any such person on parole with like effect and under the same circumstances as if he had remained in the custody of the Board."

The only other references in the act to transfer are found in Section 9005, providing for the payment of support in the



event of transfer, and in the emergency clause of the act, which reads as follows:

"There being no adequate provision for care and custody of juveniles in the training schools of the State, and particularly, no adequate provision for transfer of certain persons in such training schools to adult correctional institutions where need exists, and same being necessary for the immediate preservation of the public health, peace and safety, an emergency exists within the meaning of the Constitution, and this act shall be in effect from and after its passage and approval." (Emphasis ours.)

There is nothing in the act defining authority of the State Board of Training Schools over a person transferred to an adult correctional institution, other than that regarding paroles. Nor does the act make any provision for the retransfer to the custody of the Board of Training Schools of persons transferred to an adult correctional institution. In view of the Legislature's failure to make such provision, we are of the opinion that the act must be construed to mean that upon transfer to the adult correctional institution, the Board of Training Schools loses all control of the person transferred, except for the purpose of granting parole. There being no other indication of the Legislature's intention in this regard, the rule of statutory construction "expressio unius est exclusio alterius" is deemed applicable in arriving at the intention of the Legislature.

The language contained in the provision relating to parole appears to support this interpretation inasmuch as it uses the language "as if he had remained in the custody of the board". This definitely indicates, we feel, that the Legislature intended the Board of Training Schools to part with the custody and control of a person transferred, except for the specified matter of parole. In addition, in adopting other legislation permitting the transfer of persons committed to one institution to another, the Legislature has seen fit to make express provision for re-transfer to the institution to which the person was originally committed.

Section 9118 (b) Mo. R. S. Ann., providing for the transfer of persons committed to the intermediate reformatory to the penitentiary, expressly provides that a person transferred may be returned to the reformatory upon request of the superintendent. In view of such express provision in that law, the failure of

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the Legislature to make such provision in the act in question is considered significant.

As far the rights to which the person transferred is entitled to at the adult correctional institution, we are of the opinion that the Legislature intended that the person transferred should have the benefit of Section 9086 Mo. R. S. Ann., which provides for release upon serving three-fourths of the time for which sentenced in an orderly and peaceable manner, without infraction of the rules. That right, and the right to 5% of the wages earned, provided by Section 9048 Mo. R. S. Ann., appear to be the only statutory rights which might have been considered by the Legislature in enacting this section.

#### CONCLUSION.

Therefore, we are of the opinion that, upon the transfer by the State Board of Training Schools of a person to an adult correctional institution, and in accordance with Section 8996 (2) of Senate Bill 289, 64th General Assembly, the Board of Training Schools thereby relinquishes all custody and control of the person transferred, except for the purpose of parole. That such person may not be retransferred to the custody of the State Board of Training Schools, and that upon completion of his sentence he is to be discharged at the institution to which he had been transferred.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR  
Attorney General *J.E.T.*

RRW/LD