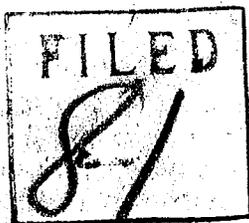


Indefinite

SCHOOLS: Boy committed to custody of State Board of
REFORMATORIES: Training Schools may be transferred to Algoa
STATE BOARD OF: without being physically present at Training
TRAINING SCHOOLS: School at time of transfer.



June 3, 1955

Mr. W. E. Sears
Director, State Board
of Training Schools
Capitol Building
Jefferson City, Missouri

Dear Mr. Sears:

This is in response to your request for an opinion dated April 12, 1955, which reads as follows:

"On April 2, 1952, a boy was admitted to the Training School for Boys at Boonville from St. Genevieve County on an Indeterminate Sentence. The boy's birthday being established as December 14, 1937. He was paroled from the training school April 16, 1953. On November 17, 1954, the boy received an indeterminate sentence for exhibiting a deadly weapon in a rude, angry, and threatening manner, from the Circuit Court of the City of St. Louis to run concurrently with six 7-year concurrent sentences (robbery first degree), all of which were carried by specific court orders at the time of his admittance to the school November 19, 1954.

"On February 26, 1955, this boy, in company with two other associates, overpowered and tied up a supervisor and escaped from the premise of the Training School for Boys and stole an automobile. They were apprehended shortly thereafter by the Boonville police. Due to the fact that this act was completed at the time the boy was over the age of seventeen years, he was filed upon by the Cooper County Authorities and received a sentence of two years to the Intermediate Reformatory at Algoa.

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"From information we have been able to gather, this boy felt that if he would commit an offense after his seventeenth birthday, he would be prosecuted by the Cooper County Authorities and receive a lesser sentence, thereby possibly escaping from the seven year concurrent sentence imposed upon him by the Circuit Court of the City of St. Louis. We feel that a transfer to Algoa Reformatory should be effected in accordance with Section 219.230, Volume I, RSMo 1949, Page 1901, and said transfer be placed on file with the superintendent at Algoa Reformatory so the boy could complete the remaining years of his original seven year sentence as imposed upon him by the original commitment of the Circuit Court of the City of St. Louis.

"The advice and counsel of your office is respectfully solicited to determine whether or not Section 219.230, as previously indicated, would permit such procedure to the end of preventing other individuals performing like offenses after their seventeenth birthday so as to escape previous commitments of a longer period of time.

"In addition, will it be permissible if the transfer papers, as approved by official Board of Training School Action, and signed by the governor of the State of Missouri, for the boy to remain at Algoa Reformatory and to serve out the original sentence without first having been returned to the premise of the Training School for Boys at Boonville?

"It is understood that upon receipt of information from Algoa Reformatory authorities of the completion of the two year sentence, the State Board of Training Schools would again re-establish jurisdiction and payment of maintenance of the boy's stay at Algoa, together with planning for the boy's future supervision upon the individual earning such eligibility. The said retention of jurisdiction of course being based upon whether or not the Board of Training Schools may utilize Section 219.230, in the manner outlined.

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"This office will be happy to furnish copies of court orders and other data concerning this boy for your study if the occasion so demands. We deeply appreciate the attention given this request for counsel."

According to the information contained in your request, the boy in question was sixteen years of age at the time when he received the six 7 year concurrent sentences on November 17, 1954. Therefore, he has been sentenced and committed to the State Board of Training Schools for a period of time which will not expire until after his twenty-first birthday (Sec. 219.160, RSMo 1949). He still has something over six years and nine months to serve on those concurrent sentences. There could be no possible basis for contention that this escape and subsequent conviction had eliminated that debt.

You have stated that the Board feels that this boy should be transferred to the Intermediate Reformatory at Algoa, where he is now confined, so that the remainder of the above concurrent sentences can be served there. No question has been raised as to whether the 2 year sentence for car theft, committed after he had escaped from the Boonville Training School, should run consecutively or concurrently with the six 7 year concurrent sentences. Therefore, this opinion does not purport to rule on that phase of the question.

Section 219.230, RSMo 1949, provides that 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.

If the Board in the exercise of its discretion feels that for the purpose of discipline a boy should be transferred to Algoa to serve the balance of his term, and if such transfer meets with the approval of the Governor, we do not believe that under ordinary circumstances there could be any question raised concerning such procedure because it is expressly authorized by Section 219.230, supra. The only factor in this case which creates a problem is that the boy is already in Algoa under a subsequent sentence, and you inquire as to whether the transfer may be made without first having returned the boy to the premises of the Training School at Boonville before ordering the transfer.

We do not find any Missouri case on this question. However, in New York, under facts similar to those present here, it has been held that the boy need not be physically present in the reformatory when the transfer is made. For instance, in *People ex rel. Coppola v. Brophy*, 254 App. Div. 641, 3 N.Y.S. (2d) 491,

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App. Den. 254 App. Div. 813, 5 N.Y.S. (2d) 508, Aff. 280 N.Y. 778, 21 N.E. (2d) 616, the relator had been released on parole from Elmira Reformatory. While out on parole he was convicted of another offense and sentenced to five years in the State Prison. He was taken to the State Prison and ten days later the Commissioner of Correction issued an order for the transfer of relator from the Elmira Reformatory, from which his parole had been revoked, to the State Prison. Relator still had some thirteen and one half years to serve on his original sentence to the Elmira Reformatory. Section 293 of the Correction Law of the State of New York authorized the transfer to the State Prison of "any prisoner confined in such reformatory" for various reasons stated therein. Relator petitioned for a writ of habeas corpus, which was denied. In disposing of the case the court said, N.Y.S. (2d) l.c. 492:

" * * * While we may assume that the remainder of his original sentence should have been served in Elmira Reformatory, at least until he was legally transferred to a state prison, Correction Law, Sec. 293; Penal Law 1909, Sec. 2190, it appears that the commissioner of correction did so transfer him and we are of the opinion that the fact, that he was not physically in Elmira Reformatory at the time this order was issued, does not affect its validity. The order, on its face, was valid, and we find no ground for the relator's contention that his imprisonment in the state prison was invalid because he was not physically in Elmira Reformatory at the time of his transfer."

See also People ex rel. Rensing v. Morhaus, 53 N.Y.S. (2d) 585.

You will notice that the New York law authorized the transfer of "any prisoner confined in such reformatory." This would make a stronger case for saying that the boy must actually be confined there at the time of the transfer than the Missouri law which authorizes the transfer of "any person committed to its custody." Yet, under the New York law, it was held that he need not be present in the reformatory at the time of the transfer.

By the sentences of November 17, 1954, this boy was committed to the custody of the Board of Training Schools. Several years will remain on that commitment even after he has served his two-year sentence at Algoa. Since the statute makes no requirement that he be physically present in the Training School when the

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transfer is made, we perceive no reason why the Board cannot order him transferred to Algoa to serve out the balance of the sentences of November 17, 1954, without first having returned him to the Training School for Boys at Boonville.

CONCLUSION

It is the opinion of this office that when a boy is committed to the custody of the State Board of Training Schools for a period of time which will not expire until after his twenty-first birthday and such boy escapes from the Training School at Boonville and while at liberty commits another offense for which he is convicted and sentenced to a term in the Intermediate Reformatory at Algoa, and that after serving the later sentence time will still remain on his original commitment from the Board of Training Schools, such boy may, for the purpose of discipline, and with the approval of the Governor, be transferred by the Board of Training Schools to the Intermediate Reformatory at Algoa to serve the balance of his term of commitment to the Board without first having been returned to the premises of the Training School at Boonville.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John W. English.

Yours very truly,

JOHN M. DALTON
Attorney General

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