

CONVICTS:
PRISONERS:
PAROLE & PROBATION:
INTERSTATE COMPACT:

1. A parole hearing may be had before officials of a receiving state pursuant to the Interstate Corrections Compact. 2. The Board of Probation and Parole of the

State of Missouri may hold a parole interview or hearing in a state, other than Missouri, for an inmate sentenced to the Missouri Department of Corrections who has been transferred pursuant to the Interstate Corrections Compact. 3. The Director of the Department of Corrections may authorize the removal to the State of Missouri, for a parole interview or hearing, of an inmate who has been transferred to an institution without the State of Missouri pursuant to the Interstate Corrections Compact. 4. Parole interviews, or hearings, may be held before transfer for those inmates who are transferred to other states pursuant to the Interstate Corrections Compact.

OPINION NO. 176

August 7, 1972

Mr. Walter G. Sartorius, Chairman
Missouri Board of Probation and Parole
Post Office Box 267
Jefferson City, Missouri 65101

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Dear Mr. Sartorius:

This is in reply to your request for an opinion of this office concerning a construction of your duties under the Interstate Corrections Compact, Section 222.260, RSMo Supp. 1971. Your request concerns whether, for the purposes of a parole interview, or hearing, when an inmate sentenced to the Department of Corrections of the State of Missouri is transferred to an institution of another party to the Interstate Corrections Compact it is the responsibility of the Department of Corrections to return the inmate to the State of Missouri for that hearing; or whether it is incumbent upon the Board of Probation and Parole to interview the inmate, and hold the hearing, at the institution without the State of Missouri.

Our research indicates that the answer to your question is one involving a policy discretion, therefore we shall merely list the options available to the Board of Probation and Parole in this regard.

I

THE PAROLE HEARING MAY BE HAD BEFORE OFFICIALS OF THE RECEIVING STATE.

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Pursuant to the Interstate Corrections Compact, Section 222.260, RSMo 1969, the parole hearing may be had before officials of the receiving state with the proceedings being transcribed, and the determination of whether to grant parole remaining in the hands of the Missouri Board of Probation and Parole. Reference should be had to the Interstate Corrections Compact. Article IV(f), in pertinent part, states:

"Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. . . . In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state."

From the above, we conclude that the appropriately designated officials of a state to whom an inmate sentenced to the Missouri Department of Corrections is transferred may hold a parole interview, or hearing, make a record, and transmit that record to the Board of Probation and Parole of the State of Missouri for the Missouri Board's determination. To the extent that the Interstate Corrections Compact could be read to be inconsistent with Missouri statutes, the Interstate Compact prevails. *Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. 275 (1959); *Ruan Transport Corporation v. Missouri Highway Reciprocity Commission* (Mo. Sup. en banc 1963) 369 S.W.2d 220.

II

THE BOARD OF PROBATION AND PAROLE OF THE STATE OF MISSOURI MAY HOLD A PAROLE INTERVIEW OR HEARING IN A STATE, OTHER THAN MISSOURI,

Mr. Walter G. Sartorius

FOR AN INMATE SENTENCED TO THE MISSOURI DEPARTMENT OF CORRECTIONS
WHO HAS BEEN TRANSFERRED PURSUANT TO THE INTERSTATE CORRECTIONS
COMPACT.

Pursuant to the Interstate Corrections Compact, Article IV(f), the Board of Probation and Parole of the State of Missouri may hold a parole interview, or parole hearing, in a state to which an inmate sentenced to the Missouri Department of Corrections has been transferred. That section, in pertinent part, reads:

"Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state.
. . ."

Clearly, the foregoing statute contemplates a hearing such as a parole interview, and thus our conclusion is the Board of Probation and Parole of the State of Missouri may hold parole interviews or hearings in an institution without the State of Missouri to which an inmate sentenced to the State Department of Corrections has been transferred.

III

THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS MAY AUTHORIZE
THE REMOVAL TO THE STATE OF MISSOURI OF AN INMATE WHO HAS BEEN
TRANSFERRED TO AN INSTITUTION WITHOUT THE STATE OF MISSOURI FOR A
PAROLE INTERVIEW OR HEARING.

Reference should be had to Article IV(c) of the Interstate Corrections Compact. That section reads:

"Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; . . ."

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The foregoing provision of the Interstate Corrections Compact clearly authorizes, for the purposes of a parole interview or hearing, that the Director of the State Department of Corrections [see Section 222.250, RSMo Supp. 1971] may authorize the removal to the State of Missouri of an inmate who has been transferred to another state pursuant to the Interstate Corrections Compact.

IV

PAROLE INTERVIEWS, OR HEARINGS, MAY BE HELD BEFORE TRANSFER FOR THOSE INMATES WHO ARE TRANSFERRED TO OTHER STATES PURSUANT TO THE INTERSTATE CORRECTIONS COMPACT.

As you indicate in your opinion request, in an attempt to resolve this situation, an agreement has been had between the Missouri Department of Corrections and the Board of Probation and Parole of the State of Missouri, in that the Department of Corrections has agreed to have the inmate in Missouri made available to the Board for the purpose of conducting a parole hearing prior to transferring him to another jurisdiction. Our reading of the Interstate Corrections Compact, with a contemporaneous reading of Section 549.261, RSMo 1969, indicates that this procedure would be proper.

CONCLUSION

It is the conclusion of this office that:

1. A parole hearing may be had before officials of a receiving state pursuant to the Interstate Corrections Compact.
2. The Board of Probation and Parole of the State of Missouri may hold a parole interview or hearing in a state, other than Missouri, for an inmate sentenced to the Missouri Department of Corrections who has been transferred pursuant to the Interstate Corrections Compact.
3. The Director of the Department of Corrections may authorize the removal to the State of Missouri, for a parole interview or hearing, of an inmate who has been transferred to an institution without the State of Missouri pursuant to the Interstate Corrections Compact.
4. Parole interviews, or hearings, may be held before transfer for those inmates who are transferred to other states pursuant to the Interstate Corrections Compact.

Mr. Walter G. Sartorius

The foregoing opinion, which I hereby approve, was prepared by my assistant Kenneth Romines.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General