

PAROLE: (1) The five-year additional parole period provided in Section 195.221, RSMo Supp. 1971, does not apply to persons convicted under Section 195.240, RSMo Supp. 1971, of selling, giving or delivering apparatus for the unauthorized use of controlled substances. (2) The parole of individuals convicted under Section 195.240, RSMo Supp. 1971, for selling, giving or delivering apparatus for the unauthorized use of a controlled substance should be governed by the provisions of Chapter 549, RSMo 1969.

OPINION NO. 45

February 25, 1974



Mr. W. R. Vermillion, Chairman
Board of Probation and Parole
Post Office Box 267
Jefferson City, Missouri 65101

Dear Mr. Vermillion:

This is in reply to the request of your predecessor for an opinion of this office concerning the applicability of Section 195.221, RSMo Supp. 1971, to a conviction under Section 195.240, RSMo Supp. 1971, for the sale of narcotic apparatus. Section 195.221 reads as follows:

"Notwithstanding section 549.275, RSMo, if the board of probation and parole releases any person from a state penal institution who was convicted of selling, giving, or delivering a controlled substance as defined in this chapter, the period of parole shall be for not less than the completion of the original sentence plus five years. If, however, he is found to have violated the conditions of his parole, he shall be recommitted to confinement by the department of corrections for the remainder of the term set by the original sentence from which he was paroled."

Your question in regards to the foregoing statute is whether the additional five-year parole period set out in this section applies to convictions for selling narcotic apparatus. Our research leads us to the conclusion that Section 195.221 applies only to convictions for the sale, gift or delivery of controlled substances,

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and not to a conviction for the sale or transfer of an apparatus or device for the unauthorized use of said substances.

At the present time no case law has been developed interpreting Section 195.221, RSMo Supp. 1971. Therefore, our opinion must be based on the rules of construction applicable to criminal statutes.

The primary rule of construction in regards to criminal statutes is that they are to be construed strictly and given no broader application than is warranted by their plain and unambiguous terms. State v. Wilbur, 462 S.W.2d 653 (Mo. 1971); Willis v. American National Life Insurance Company, 287 S.W.2d 98 (Spr.Ct.App. 1956); and State v. Getty, 273 S.W.2d 170 (Mo. 1954).

As a consequence of the above guidelines, the rule has developed that a criminal statute should not be construed to include individuals other than those specifically enumerated in the law. This rule was set out in State v. Hall, 351 S.W.2d 460 (K.C.Mo.App. 1961) when the court stated:

" . . . A criminal statute is not to be held to include offenses or persons other than those which are clearly described and provided for both within the spirit and letter of the statute, . . ." Id. at 463.

See State v. McClary, 399 S.W.2d 597 (K.C.Mo.App. 1966); and Parvey v. Humane Society of Missouri, 343 S.W.2d 678 (St.L.Ct.App. 1961).

Section 195.221 applies to any person who is convicted of selling, giving or delivering a controlled substance as defined in Chapter 195. A controlled substance is defined in Section 195.10(6) as a drug, substance or immediate precursor listed in schedules I to V of Chapter 195. No mention is made of apparatus or devices for the use of drugs in this definition or in the schedules set out in Section 195.017, RSMo Supp. 1971. Therefore, the plain meaning of Section 195.221 leads to the conclusion that the additional five-year parole provision of the section only applies to those convicted of selling, giving or delivering controlled substances in violation of the chapter.

Section 195.221 cannot be applied to individuals other than those who are clearly described in the statute. If Section 195.221 were construed so as to include individuals who sell devices for the use of controlled substances, as well as those who sell the controlled substances themselves, the section would reach beyond its scope. Since the parole provisions of Section 195.221 cannot be applied to those convicted of selling narcotic paraphernalia, it seems clear that the provisions of Chapter 549, RSMo 1969, should control the parole of these individuals.

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CONCLUSION

It is, therefore, the opinion of this office that:

(1) The five-year additional parole period provided in Section 195.221, RSMo Supp. 1971, does not apply to persons convicted under Section 195.240, RSMo Supp. 1971, of selling, giving or delivering apparatus for the unauthorized use of controlled substances.

(2) The parole of individuals convicted under Section 195.240, RSMo Supp. 1971, for selling, giving or delivering apparatus for the unauthorized use of a controlled substance should be governed by the provisions of Chapter 549, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my assistant, William F. Arnet.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General