PROBATION AND PAROLE: The Board of Probation and Parole may properly refuse to allow its clients to live in meretricious relationships during the term of their probation or parole and may likewise require that parolees or probationers sent to Missouri under the terms of the Interstate Compact for Supervision of Parolees and Probationers not live in such relationships.

OPINION NO. 80

May 2, 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 your request for this office's opinion concerning the Board of Probation and Parole's right to refuse to allow their clients to live in a common-law relationship. In that request you ask:

> "Is the Missouri Board of Probation and Parole correct in refusing to allow its probationers and parolees, or those persons sentenced in other states and supervised in Missouri under the terms of the Interstate Compact for the Supervision of Parolees and Probationers, to live in a common-law relationship. There apparently is no statute which expressly forbids such common-law relationship. Therefore, our question involves only the Board's right to refuse their clients to live in such a relationship."

In your opinion request you state that there is no specific condition of probation or parole forbidding a client from living in a common-law relationship. However, Condition No. 8 as recited in the Order of Probation (MBPP-151), Order of Parole (MBPP-151-J) and Order of Release on Parole (MBPP-206) provides "I shall report regularly, as directed, to my Probation and Parole Officer, and I agree to follow and abide by any directives given me by my Probation and Parole Officer." In the booklet entitled "Rules and Regulations Governing the Conditions of Probation and Parole," the probationer or parolee is advised: "Obviously, you are not to live in a common law relationship, since such is not legal in the State of Missouri."

You state that the Board presently will not approve a parole plan which includes living in a meretricious relationship for either Missouri parolees and probationers or for those persons sentenced in other states and supervised in Missouri. Your question is whether the Board has the right to insist that probationers and parolees under its supervision not live in common-law relationships.

It is our understanding that by the term "common-law relationship" you mean to include all common-law marriages contracted as well as meretricious liaisons. Common-law marriages contracted in Missouri after June 19, 1921, are void under the provisions of Section 451.040, RSMo. Because the issues regarding the validity of common-law marriages are very complex and dependent upon the facts of a particular case, we limit this opinion to consideration of the Board's right to refuse to allow probationers and parolees under its supervision to live in meretricious relationships. This opinion does not consider whether the Board may prohibit its clients from cohabiting with a common-law spouse if the marriage was lawfully contracted in a state other than Missouri or where the marriage was contracted in Missouri prior to June 19, 1921.

The Board of Probation and Parole derives its authority to impose conditions of parole and probation and rules and regulations concerning conditions of parole and probation from the statutes which follow:

Section 549.251, subsection 1, RSMo 1969:

> "The board may adopt general rules and regulations concerning the conditions of probation applicable to cases in the courts for which it provides probation service. Nothing herein, however, shall limit the authority of the court to impose or modify any general or specific conditions of probation."

Section 549.261, subsection 4, RSMo 1969:

> "The board may adopt such other rules not inconsistent with law as it may deem proper or necessary, with respect to the eligibility of prisoners for parole, the conduct of parole hearings or conditions to be imposed upon parolees. Whenever an order for parole is issued it shall recite the conditions thereof."

The United States Supreme Court in Morrissey v. Brewer, 408 U.S. 471, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972), recognized that

parole is subject to certain conditions. In that opinion, the Court stated at 408 U.S. 478:

> "To accomplish the purpose of parole, those who are allowed to leave prison early are subjected to specified conditions for the duration of their terms. These conditions restrict their activities substantially beyond the ordinary restrictions imposed by law on an individual citizen. Typically, parolees are forbidden to use liquor or to have associations or correspondence with certain categories of undesirable persons. Typically, also they must seek permission from their parole officers before engaging in specified activities, such as changing employment or living quarters, marrying, acquiring or operating a motor vehicle, traveling outside the community, and incurring substantial indebtedness. Additionally, parolees must regularly report to the parole officer to whom they are assigned and sometimes they must make periodic written reports of their activities. . . ."

The justification for restricting a parolee's or probationer's right to determine how he will conduct his daily affairs may be found in the fact of his criminal conviction. Regarding that issue, the United States Supreme Court in Morrissey v. Brewer, 408 U.S. at 483 stated:

> ". . . The State has found the parolee guilty of a crime against the people. That finding justifies imposing extensive restrictions on the individual's liberty. . . ."

The Missouri Supreme Court touched on the same issue in State v. Brantley, 353 S.W.2d 793 (Mo. 1962). The court stated at loc. cit. 796:

> "The liberty given to a person on conditional probation, parole, or pardon is subject to all conditions attached to his release which are not illegal, immoral or impossible of performance. . . ."

Since the policy of the Board regarding meretricious relationships is neither illegal, immoral, nor impossible of performance, we conclude that by reason of Section 549.251, subsection

1 and Section 549.241, subsection 4, RSMo 1969, as well as the cases of Morrissey v. Brewer, supra and State v. Brantley, supra, the Board may refuse to approve a parole plan which includes such a relationship with respect to Missouri probationers and parolees.

The relevant statute providing for supervision of out-of-state parolees and probationers is Section 549.310, RSMo 1969, which states:

> "The governor is hereby authorized and directed to enter into a compact on behalf of the state of Missouri with the commonwealth of Puerto Rico, the Virgin Islands, the District of Columbia and any and all other states of the United States legally joining therein and pursuant to the provisions of an act of the Congress of the United States of America granting the consent of congress to the commonwealth of Puerto Rico, the Virgin Islands, the District of Columbia and any two or more states to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and for other purposes, which compact shall have as its objective the permitting of persons placed on probation or released on parole to reside in any other state signatory to the compact assuming the duties of visitation and supervision over such probationers and parolees; permitting the extradition and transportation without interference of prisoners, being retaken, through any and all states signatory to said compact under such terms, conditions, rules and regulations, and for such duration as in the opinion of the governor of this state shall be necessary and proper." [Emphasis added].

Pursuant to Section 549.310, quoted above, the state of Missouri signed the Interstate Compact for Supervision of Parolees and Probationers on April 3, 1947. Section 1(2) of that Compact provides:

> "That each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees." [Emphasis added].

In addition, the probationer or parolee must sign an "Agreement to Return" wherein he or she agrees to abide by the conditions of parole as fixed by both the sending and the receiving states. See, Parole and Probation Compact Form III. Since the Board refuses to permit its own probationers and parolees to live in meretricious relationships, we would conclude that by reason of Section 1(2) of the above-quoted Compact, the Board may also refuse to allow probationers and parolees sent from other signatory states for supervision in Missouri to live in such relationships.

CONCLUSION

It is, therefore, the conclusion of this office that the Board of Probation and Parole may properly refuse to allow its clients to live in meretricious relationships during the term of their probation or parole and may likewise require that parolees or probationers sent to Missouri under the terms of the Interstate Compact for Supervision of Parolees and Probationers not live in such relationships.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Ellen S. Roper.

Yours very truly,

JOHN C. DANFORTH
Attorney General