BOARD OF PROBATION AND PAROLE:
PAROLES:
PARDON AND PAROLE:

Board of Probation and Pardle may, in its discretion, grant parole without requiring personal interview.

FILED
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March 11, 1954

Honorable Donald W. Bunker
Executive Secretary
Board of Probation and Parole
Jefferson City, Missouri

Dear Mr. Bunker:

This is in response to your request for an opinion dated February 2, 1954, which reads, in part, as follows:

> "When the Board of Probation and Parole has revoked the parole of an inmate released on parole from a Missouri State Correctional Institution as provided by Section 549.240 RS 1949 (said inmate having appeared and having been interviewed by the Board before the original Order of Parole was issued), may the Board of Probation and Parole reinstate the parole of said inmate while he is confined in a correctional institution of another state without first returning him to the Missouri institution?
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> "The procedure suggested by the question is occasionally indicated as a desirable one for the Board to follow. For example, a parolee with a parole supervision period of two years may abscond to another state and violate the law and receive a term of ten years in the other state correctional institution. After a few years, he may be considered to be a good subject for parole by the other State Board. If the Missouri Board has the authority to do so, it may reinstate the Missouri Parole Order and permit the subject to complete the Missouri parole concurrently with the parole from the other state, and in the other state.

> This procedure is not only more economical in that it saves the cost of returning subject to Missouri, possibly from the State of California, but it is often a real aid to the rehabilitation of the subject."

The question submitted requires an interpretation of Section 549.240, particularly that portion which we have underscored, which reads as follows:

> "The board of probation and parole is hereby authorized to release on parole any person confined in any state correctional institution, except persons under sentence of death. All paroles shall issue upon order of the board and shall be recorded. Inmates shall be considered for parole upon the application of the prisoner or upon the initiative of the board. The board shall secure and consider all pertinent information regarding each inmate, except those under sentence of death, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, attitude in the correctional institution, and reports of physical and mental examinations which have been made. Before ordering the parole of any inmate, the board shall have the inmate appear before it and shall interview him. A parole shall be ordered only for the best interest of society. A parole shall be considered a correctional treatment for any inmate and not an award of clemency. A parole shall not be considered to be a reduction of a sentence or a pardon. An inmate shall generally be placed on parole only when arrangements have been made for his proper employment or for his maintenance and care and when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every inmate while on parole shall remain in the legal custody of the institution from which he was released, but shall be amenable to the orders of the board of probation and parole. Said board shall have the power and it shall be its duty when conditions so warrant to revoke or terminate any parole, and place the offender again

> in the custody of the proper correctional institution. Said board may adopt such additional rules not inconsistent with the law as it may deem proper and necessary with respect to the eligibility of inmates for parole, the conduct of parole hearings, and conditions upon which inmates may be placed on parole. Each order for a parole issued shall contain the conditions thereof. All decisions of the board shall be by a majority vote." (Emphasis ours.)

At no place in the statutes do we find any authorization for the Board to reinstate a parole which has been previously revoked, therefore the reinstatement concerning which you inquire must be treated substantially as if it were an original proceeding.

The underscored portion of Section 549.240, supra, requiring a personal appearance before the Board and an interview before a parole is granted, is phrased in mandatory language. However, the language used is not always controlling in the construction of statutes, rather the legislative intent must be determined from all the terms and provisions of the act in relation to the subject of the legislation and the general object intended to be accomplished. Statutes, though phrased in mandatory terms, may be either directory or mandatory, depending upon the legislative intent which is derived from a construction of the act as a whole. Consideration must be given to the entire statute, its nature, its object, and the consequences which would result from construing it one way or the other. 82 C.J.S., Statutes, Section 376, page 869, et seq.

The most often quoted Missouri case on this subject generally is State ex rel. Ellis v. Brown, 326 Mo. 627, 33 S.W. (2d) 104. That case involved the construction of a statute which, by its terms, required that an applicant for registration as an absentee voter appear in person before the board of election commissioners on the Monday, Tuesday, or Wednesday of the first week prior to the election so that he might be further examined under oath and be by said board rejected or denied registration. The applicant in that case did not appear on one of the days specified but did appear on the following Friday. The court held that this provision of the act requiring that the applicant appear on one of the days designated was merely directory and not mandatory. However, the court did not hold that the requirement of appearance and interview was directory.

The court quoted the rule which is of general application in cases of this type as follows, S.W. l.c. 107:

> "'A mandatory provision is one the omission to follow which renders the proceeding to which it relates illegal and void, while a directory provision is one the observance of which is not necessary to the validity of the proceeding. Directory provisions are not intended by the legislature to be disregarded, but where the consequences of not obeying them in every particular are not prescribed the courts must judicially determine them. There is no universal rule by which directory provisions in a statute may, in all circumstances, be distinguished from those which are mandatory. In the determination of this question, as of every other question of statutory construction, the prime object is to ascertain the legislative intention as disclosed by all the terms and provisions of the act in relation to the subject of legislation and the general object intended to be accomplished. Generally speaking, those provisions which do not relate to the essence of the thing to be done and as to which compliance is a matter of convenience rather than substance are directory, while the provisions which relate to the essence of the thing to be done, that is, to matters of substance, are mandatory.'"
> 25 R.C.L. Sec. 14 pp. 766, 767.

The later case of Warrington v. Bobb, 56 S.W. (2d) 835 (St. Louis Court of Appeals), involved a statute which required voting registration lists to be "printed in plain, large type." The question was whether the registers could be copied by planographing. The court said, l.c. 837:

> "Of course our prime duty is to give effect to the legislative intent as expressed in the statute, and to that end there are many considerations to guide us. For instance, the object which the Legislature sought to attain by a statute, and the evil which it sought to remedy, may always be considered

> to ascertain its intent and purpose (Straughan v. Meyers, 268 Mo. 580, 187 S.W. 1159; Ross v. Ry. Co., 111 Mo. 18, 19 S.W. 541); the court may consider the expediency of the law in ascertaining the legislative intent (State ex rel. v. Regan, 317 Mo. 1216, 298 S.W. 747, 55 A.L.R. 773); remedial statutes are not in all events to be taken literally, but are to be interpreted so as to give effect to the legislative purpose, and to such purpose is to be ascribed a reasonable and not a technical meaning (Cole v. Skrainka, 105 Mo. 303, 16 S.W. 491); it is to be borne in mind that laws are presumptively passed with a view to the welfare of the whole community (Gist v. Constr. Co., 224 Mo. 369, 123 S.W. 921); and in determining the legislative intent, and in effectuating the legislative purpose, words used may be either expanded or limited in the meaning so as to harmonize the law with reason (City of St. Louis v. Christian Brothers College, 257 Mo. 541, 165 S.W. 1057; Kerens v. St. Louis Union Tr. Co., 283 Mo. 601, 223 S.W. 645, 11 A.L.R. 288); and, in determining whether a statute is directory or mandatory, the prime object is to ascertain the legislative intention disclosed by the statutory terms and provisions in relation to the object of the legislation. Provisions relating to the essence of the thing to be done, that is, matters of substance, are mandatory, while, generally, statutory provisions not relating to the essence of the thing to be done, and as to which compliance is not a matter of substance, are directory. State ex rel. v. Brown, 326 Mo. 627, 33 S.W. (2d) 104, 107."

The court held that the object of the legislation was to safeguard elections in large cities and to prevent repeating, colonization, and other fraudulent abuses of the voting franchise. This being the basic purpose of the act, it was not the intention of the Legislature to direct the precise mechanics to be used in attaining the end result of preparing the lists in legible form in sufficient numbers to meet all demands nor did the Legislature have any intention "by the general language

used in the phraseology of the statute of precluding the subsequent use of new and improved methods of doing the required work by which substantial economies might be effected for the taxpayer." Holding the statute directory, the court said, l.c. 837:

> "And we are all the more constrained to this conclusion from the view that the provision in question is, after all, but directory. The preparation of the lists in legible form and in sufficient numbers to meet all demands is the essence of the thing the statute requires to be done, and not the mechanics of their preparation, which is a matter of convenience rather than substance. * * * Such being true, does it not follow with even greater reason that the precise manner of the preparation of the lists was left to the sound discretion of the board of election commissioners, guided in their actions of course by the prime object to be accomplished, as set forth in section 10592 of the Rev. Stat. of Mo. 1929 (Mo. St. Ann. Sec. 10592)?"

This principle was reasserted in State ex rel. v. Holmes, 253 S.W. (2d) 402 (Mo. Sup.).

It is to be noted that the Legislature has not declared the consequences of a failure of the parole board to require a personal interview before granting a parole to an inmate of a correctional institution. Therefore, unless this provision is of the essence of this legislation, a failure to do so would not invalidate the parole.

The general object of the legislation appears to be the correction and rehabilitation of the inmate. It is specifically declared in the statute (Sec. 549.240, supra) that "a parole shall be considered a correctional treatment * * * and not an award of clemency." The board is given wide discretion in achieving this object and should not be hampered therein by unduly technical construction of the limited directions given in the statute for the procedure to be followed in granting paroles.

Of course, we are not to be understood as saying that the legislative directions to be followed in granting paroles are to be ignored. The board has the duty of following even merely

directory provisions of the statute insofar as practicable. State ex inf. Walker ex rel. Wagster v. Consolidated School Dist. No. 40 of Dunklin County, 358 Mo. 839, 217 S.W. (2d) 500; 82 C.J.S., Statutes, Section 374, page 869. The wisdom of doing so in this case under ordinary conditions is readily apparent.

However, if the Board of Probation and Parole in the exercise of its sound discretion feels that it can better achieve the general object of rehabilitation of a convicted criminal by placing on parole a convict who is on parole from an institution in another state without first requiring the return of such inmate to this state for a personal interview, it is the opinion of this office that it may do so.

CONCLUSION

It is the opinion of this office that when an inmate of a Missouri correctional institution has been granted a parole by the Board of Probation and Parole and permitted to go to another state where he is later convicted of a subsequent crime in such other state and his Missouri parole is revoked, the Board may, in its discretion, grant a second parole to such inmate without first requiring his return to this state for a personal interview.

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

Yours very truly,

JOHN M. DALTON
Attorney General

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