

CRIMINAL LAW: One who has been previously convicted  
of a felony is not eligible to a parole  
PAROLE: under Section 4201 R. S. Missouri, 1939.

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April 12, 1943

Honorable Mark Morris  
Prosecuting Attorney  
Pike County  
Bowling Green, Missouri



Dear Sir:

We are in receipt of your request for an opinion,  
under date of April 8, 1943, which reads as follows:

"Would appreciate opinion on the  
following question.

"Assuming that one has been pre-  
viously convicted of a felony and  
is convicted again for a felony,  
but the second time instead of be-  
ing sentenced to the penitentiary  
is only sentenced for a jail sen-  
tence, is this man eligible for a  
parole under Section 4201, R. S.,  
1939?"

Section 4199 R. S. Missouri, 1939, reads as fol-  
lows:

"The circuit and criminal courts  
of this state, the court of crimi-  
nal correction of the city of St.  
Louis and boards of parole created  
to serve any such court or courts  
shall have power, as hereinafter  
provided, to parole persons con-  
victed of a violation of the crimi-  
nal laws of this state."

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Under this section the circuit judge has the power of parole and it does not mention that it applies to felonies only.

Section 4201 R. S. Missouri, 1939, reads as follows:

"When any person of previous good character and who shall not have been previously convicted of a felony, shall be convicted of any felony except murder, rape (where the rape charged and the proof shows said rape to have been committed by means of force, violence or by putting the female in fear of immediate injury to her person), arson or robbery, and imprisonment in the penitentiary shall be assessed as the punishment therefor, and sentence shall have been pronounced, the court before whom the conviction was had, if satisfied that such person, if permitted to go at large, would not again violate the law, may in his discretion, by order of record, parole such person and permit him to go and remain at large until such parole be terminated as hereinafter provided: Provided, that the court shall have no power to parole any person after he has been delivered to the warden of the penitentiary."

Under this section a person can only be eligible to be paroled who has not previously been convicted of a felony.

Under the facts stated in your request you say that you are assuming that a person has been previously convicted of a felony, and under the conviction has only been sentenced to a jail sentence. The language set out in Section 4201, supra, is unambiguous and needs no construction. Where the language of a statute is plain and unambiguous it may not be construed, but must be given effect as written. (St. Louis Amusement Co., v. St. Louis County, 147 S. W. (2d) 667, 347 Mo. 456.)

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CONCLUSION

It is, therefore, the opinion of this department that where one has been convicted of a felony and is again convicted, but the second time, instead of being sentenced to the penitentiary is only sentenced to a jail sentence, he is not eligible for a parole under Section 4201 R. S. Missouri, 1939.

Respectfully submitted

W. J. BURKE  
Assistant Attorney General

APPROVED BY:

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ROY McKITTRICK  
Attorney General of Missouri

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