CUMULATIVE SENTENCES:
COMMITMENTS:
DEPARTMENT OF CORRECTIONS:
PAROLEES:

(1) The cumulative sentence provision of Section 222.020, RSMo 1949, is not applicable to a sentence followed by a commitment thereupon to the penitentiary, where such sentence was imposed upon a conviction for an offense committed by a parolee from the Intermediate Reformatory prior to the completion of said parole; (2) an amendment to Section 222.020 is necessary since under Section 5, House Bill No. 208, 69th General Assembly, there are no longer any sentences to the penitentiary.

January 9, 1958

Honorable E. V. Nash, Warden
Missouri State Penitentiary
Jefferson City, Missouri

Dear Mr. Nash:

This will acknowledge receipt of your opinion request of November 22, 1957, which reads as follows:

> "The Sixty-Ninth General Assembly enacted and passed House Bill No. 208, particular attention directed to Section 6, paragraph 2, wherein all persons convicted in the State of Missouri were to be sentenced to the Department of Corrections. Final disposition of the individual as to whether or not they would be sent to the Intermediate Reformatory or the state penitentiary to be determined by a classification committee set up within the Department of Corrections.
>
> "We are wondering what effect this will have upon an inmate presently under sentence at the Intermediate Reformatory who might be paroled and, while on parole and prior to the completion of the parole, would commit an offense and be sentenced to the State Penitentiary, as to whether or not this additional sentence would run consecutively or concurrent.
>
> "Your attention is directed to the Supreme Court ruling in the Clarence Anthony alias Clarence County case, cause #38385, which has been the basis for action in past cases.

> "We are also interested as to whether or not it will be necessary to request an amendment to Section 222.020 to clarify this situation."

Our attention has been directed to Section 6, paragraph 2, House Bill No. 208, 69th General Assembly. This section reads as follows:

> "2. The sheriff or other officer charged with the delivery of persons committed to the department of corrections for confinement in a correctional institution within the department shall deliver the person, together with all necessary papers, to the reception center and shall take from the director of the division of classification and assignment a certificate of delivery of the prisoner."

We believe, from the nature of the questions in the opinion request, that such questions have arisen as a result of Section 5, House Bill No. 208, 69th General Assembly, rather than Section 6, paragraph 2, supra, and, consequently, this opinion will be written accordingly. Said section reads as follows:

> "Section 5. All commitments which under the law heretofore in force would have been made to the state penitentiary, Jefferson City, or to the Intermediate Reformatory, Cole County, shall hereafter be made to the department of corrections generally and the division of classification and assignment has full power to assign the committed person to any correctional institution or branch thereof within the department appropriate to his class."

The first question posed in the opinion request concerns the nature of a sentence, that is, whether it is cumulative or concurrent, when such sentence is imposed upon a parolee who has been paroled from the Intermediate Reformatory, the latter sentence being to the penitentiary, although the party was still under sentence to the Intermediate Reformatory. The determination of this question necessarily entails an interpretation of both Section 5, supra, and Section 222.020, RSMo 1949. The latter section reads as follows:

> "The person of a convict sentenced to imprisonment in the penitentiary is and shall be under the protection of the law and any injury to his person, not authorized by law, shall be punishable in the same manner as if he were not under conviction and sentence; and if any convict shall commit any crime in the penitentiary, or in any county of this state while under sentence, the court having jurisdiction of criminal offenses in such county shall have jurisdiction of such offense, and such convict may be charged, tried and convicted in like manner as other persons; and in case of conviction, the sentence of such convict shall not commence to run until the expiration of the sentence under which he may be held; provided, that if such convict shall be sentenced to death, such sentence shall be executed without regard to the sentence under which said convict may be held in the penitentiary."

It is not clear from the opinion request whether the sentence to the Intermediate Reformatory was prior or subsequent to the effective date of Section 5, supra. In our view, however, as will be pointed out, it is immaterial.

The provision in Section 222.020, supra, requiring a sentence upon a conviction for an offense committed in this state by a convict under sentence, to begin at the expiration of the sentence under which the convict may be held, was interpreted in the case of Anthony v. Kaiser, 169 S.W.2d 47, as being applicable only to convicts who were under sentence to the penitentiary at the time of the commission of the second offense. It was held in said case that the provisions of this section were not applicable to a party who, at the time of the commission of the second offense, was under sentence to the Intermediate Reformatory. The court, in this case, further held that the rule that sentences to different institutions are cumulative and not concurrent, was not applicable in this situation for the reason that the Intermediate Reformatory and the penitentiary are not, in legal contemplation, different institutions.

If the sentence to the Intermediate Reformatory was prior to the effective date of Section 5, supra, then we believe that the Anthony case, supra, is controlling.

If, on the other hand, a party is placed in the Intermediate Reformatory under a conviction occurring subsequent to the

effective date of Section 5, supra, then, in such case, the convict would not have been sentenced to the penitentiary; he would have been committed to the Department of Corrections under Section 5, supra, and, by it, placed in the reformatory. Consequently, unless a commitment to the Department of Corrections means the same as a sentence to the penitentiary, the cumulative sentence provision of Section 222.020 would not be applicable to a sentence imposed upon a conviction for an offense committed by a parolee from the Intermediate Reformatory for, as pointed out in the Anthony case, supra, such cumulative sentence provision is applicable only to convicts who were under sentence to the penitentiary. We believe that it is clear, upon its face, that a commitment to the Department of Corrections, as now required under Section 5, supra, is not the same as a sentence to the penitentiary for the reason that the two places are not one and the same. It appears, on the other hand, that the term "commitments" as used in Section 5, supra, means the same as sentences, it being stated by the court in State v. Harrison, 276 S.W.2, 222, l.c. 226, that "* * * a commitment being, as required by statute, * * * but a certified copy of a judgment and sentence * * *."

You have further inquired "as to whether or not it will be necessary to request an amendment to Section 222.020 to clarify this situation." In view of the foregoing interpretation of Section 5, supra, and the ruling in the Anthony case, supra, we believe that such will be necessary. This for the reason that there will be no sentences to the penitentiary upon convictions occurring after the effective date of Section 5, supra, and, consequently, under the interpretation of Section 222.020, by the Anthony case, supra, the cumulative sentence provision of the latter section will not be applicable to any such convict who commits an offense while on parole from either the Intermediate Reformatory or the penitentiary.

CONCLUSION

It is the opinion of this office that: (1) the cumulative sentence provision of Section 222.020, RSMo 1949, is not applicable to a sentence followed by a commitment thereupon to the penitentiary, where such sentence was imposed upon a conviction for an offense committed by a parolee from the Intermediate Reformatory prior to the completion of said parole; (2) an amendment to Section 222.020 is necessary since under Section 5, House

Honorable E. V. Nash, Warden

Bill No. 208, 69th General Assembly, there are no longer any sentences to the penitentiary.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Henry.

Very truly yours,

John M. Dalton
Attorney General

HLH:hw