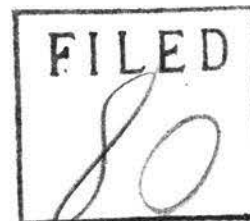


DEPARTMENT OF PENAL INSTITUTIONS: Inmates of Intermediate Reformatory should be held in that institution until ordered transferred by the Commissioners of Penal Institutions with the consent of the Governor.

8-17
August 16, 1934

Honorable J. M. Sanders
Warden
Jefferson City
Missouri



Dear Mr. Sanders:

Receipt of your letter dated July 31, 1934 is acknowledged.

Your letter is as follows:

"The statutes provide that if a person be convicted for the first time of a felony, he being between the ages of seventeen and twenty-five and he not be guilty of treason or murder in the 1st or 2nd degree, or any other offense in which capital punishment is provided, may be sentenced to the Intermediate Reformatory at Alcoa, Missouri; however, in many cases the Courts not knowing of the prisoner having a former record, have sentenced them to the Reformatory at Alcoa.

It has been the practice, when it was discovered, that they had a former record, to hold the inmate in our receiving cell at the prison pending the transfer to the prison proper.

It also has been the practice, in cases of escapes from Alcoa, to be brought to the prison until the transfer to the prison is made.

I contend in all cases, both second offenders and escapes, should be held at Alcoa where they have been sentenced by the Court, until the final order of the Governor is made transferring them to the penitentiary.

I do not think that I have any legal right to hold any Algoa prisoner pending the decision of the Board, and should not be held responsible for same, as Algoa and the Penitentiary are two separate institutions.

Would you please render an opinion in this matter."

Section 8466 Revised Statutes 1929 provides:

"An intermediate reformatory for young men, who for the first time have been convicted of a felony as hereinafter designated, is hereby established."

With reference to the management and control of the intermediate reformatory Section 8470 provides:

"The commissioners of the department of penal institutions shall have control of the institution, determine the policy of the same and make necessary rules not inconsistent with the law, for the discipline, instruction, and employment, and release or transfer, of the inmates; cause to be kept proper records including those of the inmates; and audit the accounts of the superintendent monthly."

Section 8474 reads:

"If any male person seventeen years of age and less than twenty-five years of age be convicted of a felony for the first time, and he be not guilty of treason or murder in the first or second degree, or any offense for which capital punishment is provided, the court trying such person may sentence him to the custody of the officials of the intermediate reformatory to be confined at said reformatory for the term prescribed by the statutes of this state and fixed by the court or jury as a punishment for such offense. It shall be the duty of the officials, in charge of said

reformatory to receive all such convicted persons."

Subdivision b. of Section 8475, authorizing the transfer of inmates from the intermediate reformatory to the penitentiary, in part reads as follows:

"The department of penal institutions shall have the power, with the consent of the governor, to transfer to the penitentiary any prisoner who subsequent to his committal to the intermediate reformatory, shall be shown to their satisfaction to have been, at the time of his conviction, twenty-five years of age or over, or to have been previously convicted of a felony; and may also transfer any apparently incorrigible prisoner, whose presence in the reformatory appears to be seriously detrimental to the well-being of the inmates of the institution.
* * * *"

The above quoted portion of Section 8475 gives to the Commissioners of Penal Institutions, with the consent of the Governor, authority to transfer to the penitentiary any inmate of the intermediate reformatory when it is shown that such inmate does not come within the provisions of Section 8474 above set out. The power and authority is clear and absolute notwithstanding the judgment and sentence of the court.

The judgment and sentence of the court is presumptively correct as to age and first conviction, until a different finding is made by the commissioners of penal institutions.

Until such showing is made to the commissioners of penal institutions and until the consent of the governor to a transfer to the penitentiary has been procured, the inmate should be kept and remain in the intermediate reformatory and not in the state penitentiary. He should only be transferred to the state penitentiary from the intermediate reformatory when the commissioners of penal institutions have made an order therefor, with the consent of the governor.

The above statement would apply to any inmate sentenced to the intermediate reformatory who might be subject

Honorable J. M. Sanders

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to be transferred to the state penitentiary by order of the commissioners, with the consent of the governor.

Very truly yours,

GILBERT LAMB
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

GL:LC