

INTERMEDIATE REFORMATORY -- No provision in law for prosecuting inmates for escaping from this institution; Sec. 3913 not applicable.

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March 9, 1938

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Honorable Carl F. Wymore  
Prosecuting Attorney  
Cole County  
Jefferson City, Mo.



Dear Mr. Wymore:

We have your letter of March 2, 1938, which reads as follows:

"Do you have an approved information to be used in the case of an escape from Algoa Reformatory? I have been filing on these cases under section 3913 R. S. 1929, but the question has been raised in Court several times as to whether or not the escapes can be prosecuted under that section or any section at all."

We have made a diligent search of the statutes and we are unable to find any statute under which inmates of the Intermediate Reformatory at Algoa may be prosecuted for escaping from that institution.

You mention in your letter that you had been filing on such cases under Section 3913, R. S. Mo. 1929, which reads as follows:

"If any person confined in the penitentiary for any term less than life shall escape from such prison, or, being out under guard, shall escape from the custody of the officers, he shall be liable to the punishment imposed for breaking prison."

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We do not believe this section covers the escape of inmates from the Intermediate Reformatory, because it distinctly refers to any person "confined in the penitentiary." The penitentiary is a separate and distinct institution governed by Article 5, Chapter 44, R. S. Mo. 1929, while the Intermediate Reformatory at Alcoa is likewise a separate and distinct institution established and governed by Article 6, Chapter 44, R. S. Mo. 1929.

Section 8467 of said latter chapter reads:

"The intermediate reformatory for young men shall be under the management of the department of penal institutions, but it shall be established separate and apart from the Missouri penitentiary and also the Missouri reformatory now located at Boonville."

Section 3913, supra, was on the statute books many years prior to the establishment of the Intermediate Reformatory, and it clearly applies to the escape of inmates of the penitentiary. Criminal statutes must be strictly construed. In the case of State vs. Owens, 268 Mo. 481, the Supreme Court had before it a case where a prisoner of a county jail had been convicted of escaping from the custody of the Street Commissioner of a town, in whose custody he had been placed by order of the court.

The prosecution was based upon the section of the statute which made it an offense for any person confined in any county jail upon conviction for any criminal offense, or held in custody going to such jail, to break such prison or custody. In passing upon the case, the court said: (l.c. 484)

"It will be noted that the above section limits the violation to a breaking and escaping from a 'county jail' or from 'custody going to jail', and the statute in no manner undertakes to prescribe a penalty for escaping from a street commis-

sioner into whose custody he is placed for the purpose of being worked upon the streets, as charged in the present indictment. Our attention has not been called to a statute nor have we been able to find one making the acts charged in the present indictment a criminal offense. As much is virtually conceded by the brief of the learned Attorney-General. This being true, we need not determine whether the information sufficiently charges a lawful custody in said street commissioner.

"It is a well established rule that criminal statutes must be strictly construed. Very appropriate to the discussion here is the language used by the Kansas Supreme Court in discussing a section (182) of the Kansas Code which appears to be almost an exact duplicate of section 4381, Revised Statutes 1909. The court said:

'Section 182 has reference to persons confined in a county jail or held in custody going to such jail. As a rule, penal statutes must be strictly construed, and they cannot be extended beyond the grammatical and natural meaning of their terms, upon the plea of failure of justice. (Remington v. State, 1 Ore. 281; State v. Lovell, 23 Iowa, 304; Gibson v. State, 38 Ga. 571.)

"We are not at liberty to interpolate into the statute "city prison" nor can we ju-

dicially determine that a "city prison" is a "county jail." It is therefore our opinion that the matters charged in the information do not constitute any offense within the statute. The omission is one for which the Legislature is responsible. It is probably a casus omis-sus, which the Legislature may, but the court cannot, supply.' (State v. Chapman, 33 Kan. 134.) "

The foregoing case was quoted from with approval in the later case of State vs. Betterton, 317 Mo. 307, wherein the court held that a convict who escaped from a penitentiary farm could not be prosecuted under the statute making it an offense to escape from the penitentiary. In this later case the court also said: (l.c. 310)

"Keeping pace with the changing conditions in the supervision of offenders against the law and profiting by experience, our General Assembly has defined in separate and distinct sections of the statutes various kinds of escapes of prisoners from different places of confinement and from the lawful custody of officers of the law, with and without force, both before and after conviction. With such ample protection for society in these separate and distinct provisions of the law there should be no inclination on the part of our courts to extend any particular section of the statute beyond its proper limits, and we find no such inclination in the previous rulings of this court."

Hon. Carl F. Wymore

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In the light of the foregoing authorities, we do not think that Section 3913 can be held to make it a crime for inmates of the Intermediate Reformatory to escape from said institution.

CONCLUSION

It is, therefore, the opinion of this office that inmates of the Intermediate Reformatory at Alcoa who escape therefrom cannot be prosecuted under Section 3913, R. S. Mo. 1929, and that there is no statute under which inmates escaping from said institution can be prosecuted.

Respectfully submitted,

HARRY H. KAY  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
(Acting) Attorney General

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