

Opinion No. 55-6122

March 3, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. E. B. Swope, Warden, Penitentiary of New Mexico, P. O. Box 1059, Santa Fe, New Mexico

We have received your request for an opinion regarding construction to be placed upon § 41-17-8, New Mexico Statutes Annotated, 1953. Your questions are:

"1. Is it mandatory for us to furnish \$ 25.00 to prisoners who are released on parole or by expiration of sentence, when such prisoner is turned over to the custody of other authorities for prosecution of another crime or for confinement in another institution?

2. Is it mandatory for us to give the \$ 25.00 to prisoners who are discharged after having been returned for parole violation, when such prisoners received \$ 25.00 at the time of release on parole?"

Section 41-17-8, New Mexico Statutes Annotated, 1953, reads as follows:

"Upon the release of any prisoner, upon parole from the penitentiary, the superintendent shall provide him with suitable clothing, with twenty-five dollars (\$ 25.00) in money, and shall procure transportation for him to his place of employment, if within the state, and if not within this state then to any place within the boundaries of the state. The superintendent shall make the same provision for any prisoner discharged from the penitentiary by expiration of his maximum sentence, save that he shall procure transportation for said prisoner to his home, if within the state; if not, to the place of his conviction, or to any place within the boundaries of the state."

It is to be noted that the above statute provides that the superintendent of the penitentiary shall in two instances provide clothing, money and transportation for inmates who are released from the penitentiary, firstly, upon the release of any prisoner upon parole, and secondly, upon the discharge of any prisoner by expiration of his maximum sentence. The statute is mandatory. No exceptions are incorporated in it. The plain language of this statute makes it incumbent upon you to provide clothing, money and transportation in these two instances.

Regardless of how we feel as to the propriety of furnishing money, clothing or transportation to prisoners who are turned over to the custody of other authorities for further prosecution, or confinement in another institution, or how we feel about providing money, transportation and clothing to prisoners who are discharged after having been brought back for violation of parole, we cannot go beyond the plain terms of the statute.

The answers to your questions are both in the affirmative.

I should like to call to your attention Attorney General's Opinion No. 5621, rendered December 17, 1952, and construing the same statute. That opinion held that a prisoner who is released for the purpose of retrial or is discharged out-right on a writ of habaes corpus is not entitled to money, clothing or transportation upon release from the penitentiary. This, for the reason that such a prisoner does not come within the terms of the above statute, i.e., he is not released on parole, nor is he discharged by expiration of his maximum sentence.

Trusting that this answers your inquiry satisfactorily, I am

By Santiago E. Campos

Assistant Attorney General