

Opinion No. 19-2392

October 11, 1919

BY: N. D. MEYER, Assistant Attorney General

TO: Hon. Fidel Ortiz, Superintendent, State Penitentiary, Santa Fe, New Mexico.

Construction Parole Laws.

OPINION

In reply to your letter of September 29th, in which you state that the Board of Penitentiary Commissioners passed a resolution instructing you to obtain from our office an opinion as to that part of the parole law which gives the prison board authority to parole prisoners after serving their minimum sentence, and particularly for what period of time the Board may parole prisoners, we beg to advise as follows:

Section 5079 gives the Prison Board the power to allow prisoners to go outside of the penitentiary upon parole after having served the minimum term of their sentence, to remain, however, while on parole, in the legal custody and control of said Prison Board, subject at any time to be taken back to the penitentiary.

The period for which the penitentiary authorities have legal custody of a prisoner is that period of time designated in the commitment which of course, extends over the maximum sentence imposed. Therefore, it would seem that the intent of the law was to give the penitentiary authorities the power to parole prisoners, after they had served their minimum sentence, for the remaining period of the maximum time expressed in the commitment, and that it is not within the scope or discretion that the penitentiary board may exercise to set a different period of time.

This view is strengthened by section 5080 of the Code, in which it is stated that the Superintendent may, when, in his opinion, any prisoner has served not less than six months of his parole acceptably and has given evidence that he will conduct himself within the law, make certificate to that effect to the Prison Board, and then the Board may consider the case and discharge the prisoner from parole finally if they deem that the case merits such action.

You will see from this section of the law that the Board is given specific authority to finally discharge the prisoner who has been out on parole, but not until after he has served at least six months of his parole, so it is to be implied that the penitentiary authorities cannot at the time of paroling a prisoner set any certain period of time for which the prisoner is paroled, but, on the other hand, the parole operates for the maximum sentence, unless the prisoner be discharged before by the Prison Board under the authority conferred in section 5080.

Trusting that the foregoing answers your question satisfactorily, I am