

Opinion No. 22-3571

August 30, 1922

BY: HARRY S. BOWMAN, Attorney General

TO: Hon. M. C. Mechem, Governor of New Mexico, Santa Fe, New Mexico.

Transfer Inmate From Reform School to State Penitentiary.

OPINION

{*174} In reply to your letter of the 26th instant inclosing one from Mr. L. C. White, Chairman of the Board of Trustees of the New Mexico Reform School, to you, regarding the transfer of Eddie Eaton from the Reform School to the State Penitentiary, I beg to advise:

The authority to make a transfer of this boy from the Reform School to the Penitentiary would be governed, of course, by the wording of the judgment of the court in passing sentence upon him. If the court had provided in the judgment that the sentence was to be executed in part at the Reform School and after the boy had reached a certain age that he should then be confined in the State Penitentiary, there would be no question but what the transfer from one institution to the other would be legal.

In the absence of any such provision in the judgment, I am of the opinion that the prisoner may not be legally transferred.

There are no statutes authorizing a change of prisoners from one institution to another and there is nothing which will impliedly authorize such a procedure. Reverting, then, to the general principles, we find the law to be as follows, regarding the change or alteration {*175} of the judgment of the court so as to provide for the serving of a part of the prisoner's term at the State Penitentiary.

2 Bishop's New Criminal Procedure, page 1131, Section 1298, reads as follows:

"The power of the court to alter its docket entries and records during the term wherein they are made, includes the right within such time to revise, correct and change its sentences after formal pronouncement, if nothing has been done under them, but steps taken under a sentence, -- for example, a substantial part of the execution thereof, will cut off the right to alter it even if during the term, and with the expiration of the term the power expires."

It would therefore appear that there is no legal authority at present to change the judgment of the court so as to authorize the transfer of the prisoner to the penitentiary.

See also: In re Sullivan, California, 84 Pac., 781.

It has been held that the destruction of a penal institution by fire or the elements would justify the removal of prisoners to some other institution in the state, even though the commitment provides for the confinement of such prisoners in the institution subsequently destroyed. It has also been held that in cases where a penal institution is removed from one point to another the prisoners may be likewise removed to the new location. Nowhere, however, do I find authority for the transfer of a prisoner from one institution to another without his consent, and I doubt whether any such procedure would be valid.

It is, therefore, my opinion that no attempt should be made to transfer Eddie Eaton from the Reform School to the State Penitentiary without the consent of his parents or his guardian.

Mr. White's letter, which accompanied yours of the 26th, is returned herewith.