

Opinion No. 35-896

February 13, 1935

BY: FRANK H. PATTON, Attorney General

TO: Board of Penitentiary Commissioners, Santa Fe, New Mexico.

{*42} I have been requested by Mr. John B. McManus, Superintendent of Penitentiary, to render an opinion regarding the power of the board of Penitentiary Commissioners to parole a prisoner.

The question has arisen whether or not a prisoner, who has served his minimum term and against whom an information or indictment is pending, can be paroled.

Under Section 130-167 of the 1929 Code, the prison board has the power to establish rules and regulations for the release of prisoners upon parole. In my opinion, under the provisions of this section, it is discretionary with this board whether or not they shall release {*43} upon parole any prisoner whose status is as above stated. Of course, there are certain limitations upon the power of parole which are mentioned in the statute, such as -- that useful employment shall be obtained for the paroled prisoner, etc., and in all cases paroles must be approved by the Governor, but subject to these limitations, it is my opinion that the prison board has full discretion to act in cases such as above mentioned.

By: QUINCY D. ADAMS,

Asst. Atty. General