

February 4, 1952

Rev. Walter Hoffman, Chairman
Board of Pardons and Paroles
Phoenix, Arizona

Dear Sir:

In your letter of February 3rd you have requested an opinion from the Attorney General concerning the following question: Does Section 5326 of the Revised Code of Arizona, 1928, concerning the discharge of a paroled prisoner give the Board of Pardons and Paroles the authority to grant an absolute discharge to a parolee, notwithstanding the fact that his maximum sentence has not expired, and if this power is so vested in the Board of Pardons and Paroles, is it contingent upon the signature of the governor of the State of Arizona? Further this question is raised: Does such an absolute discharge give the discharged parolee the power to vote?

We will answer these questions in their proper order.

Section 5220, Revised Code of Arizona 1928, undoubtedly gives to the Board of Pardons and Paroles the power to pass upon and recommend reprieves, commutations, paroles, and pardons. Section 5215, Revised Code of Arizona, 1928, undoubtedly gives the Governor power to grant reprieves, commutations, and pardons after conviction for all offenses except treason and cases of impeachment, providing that the Board of Pardons and Paroles recommends that he grant such reprieves, commutations, or pardons. It is to be noted that in this section no mention whatsoever is made of the power of the Governor to grant paroles upon any condition and it has been so held by our Supreme Court in State vs. Superior Court, 30 Ariz. 332, 246 Pac. 1033. The court there said:

"Under this section (5220) and Sections 5230-5322 the Board of Pardons and Paroles has exclusive power to release upon parole and the Governor has nothing whatever to do with paroling of prisoners."

The Legislature has further provided in Section 5326 that if it shall appear to said Board that there is

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reasonable probability that any prisoner on parole will live and remain at liberty without violating the law and that his absolute discharge from imprisonment is not incompatible with the welfare of society, then the Board shall issue to said prisoner an absolute discharge from imprisonment upon such sentence, which shall be effective therefor. Since it has been decided that the Governor of Arizona has nothing whatsoever to do with the paroling of prisoners it naturally follows that the Governor has nothing whatsoever to do with the absolute discharge from this parole of a previously paroled prisoner. In Orme, et al. vs. Rogers, 260 Pac. 199, our Supreme Court held:

"The law in regard to paroles was modified* * * and a clause was added to the effect that, after parole, the proper authorities might grant an absolute discharge from the sentence. This discharge is more than a parole in that it releases the prisoner from any further imprisonment for the same offense no matter what his conduct thereafter, * * *"

From the above we can come to but one conclusion and that is that under Section 5326, Revised Code of Arizona 1928, the Board of Pardons and Paroles may grant an absolute discharge to a parolee notwithstanding the fact that his maximum sentence has not expired and that such absolute discharge is not contingent upon the signature of the Governor of the State of Arizona.

We now come to your third question which is: Does an absolute discharge give the discharged parolee the power to vote? Section 4903, Revised Code of Arizona 1928, relating to the effect of sentence to prison upon civil and personal rights provides in part as follows:

"A sentence of imprisonment in a state prison for any term less than life suspends all the civil rights of the person so sentenced and forfeits all public offices and all private trusts, authority or power during such imprisonment."
(Italics ours)

Without citing further authorities we feel that it is clear that the Legislature intended that the prisoner's civil rights were to be suspended only during his imprisonment and that it necessarily follows that upon his discharge

by expiration of sentence, absolute discharge granted by the Parole Board, or pardon granted by the Governor, the suspension of his civil rights automatically ceases and he therefore may exercise those rights, which includes the power to vote.

In our opinion, as far as it concerns an offender who has been sentenced to imprisonment in the state prison for any term less than life there is absolutely no difference between the three means of discharge. Therefore, the opinion which was rendered by the Attorney General's office under date of June 24th, 1936, should govern in this case.

Yours very truly,

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