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PHOENIX, ARIZONA

July 30, 1975

DEPARTMENT OF LAW OPINION NO. 75-6 (R-8) (R75-354)

REQUESTED BY: DANIEL D. SIMMONS
Chairman
Board of Pardons and Paroles

- QUESTIONS:
1. Are the parole procedures and duties statutorily imposed on the Department of Corrections and the Board of Pardons and Paroles applicable to a person serving an Arizona sentence in another jurisdiction?
 2. May the Department of Corrections authorize by administrative fiat the release of an Arizona prisoner, who may or may not be parole eligible in terms of his Arizona sentence, on a parole which has been granted by another jurisdiction on its sentence thus permitting the time remaining on the Arizona sentence to run during that parole period?

- ANSWERS:
1. Yes.
 2. No.

The power to grant a parole according to Arizona law is exclusively within the Board of Pardons and Paroles. A.R.S. § 31-402. State v. Nielson, 108 Ariz. 251, 495 P.2d 847 (1972); State ex rel. Arizona State Board of Pardons and Paroles v. Superior Court of Maricopa County, 12 Ariz.App. 77, 467 P.2d 917, supplemented 12 Ariz.App. 228, 469 P.2d 120 (1970). The terms of A.R.S. § 34-411 are mandatory in stating that any prisoner meeting the requirements listed therein shall be given an opportunity to appear and apply for release upon parole.

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A.R.S. § 31-221 requires the Department of Corrections to maintain a master record file on each person committed to it containing progress reports prepared for the Board of Pardons and Paroles. A.R.S. § 31-412 provides that reports from the Department of Corrections be forwarded to the Board of Pardons and Paroles for consideration in determining whether to authorize the release of a prisoner on parole.

The statutes noted above draw no distinction between prisoners serving the Arizona sentence in-state or out-of-state. Accordingly, there is no reason to believe that the Department of Corrections or the Board of Pardons and Paroles are relieved of their statutory responsibilities simply because the Arizona sentence is served in another jurisdiction.

In response to Question 2, as noted above, only the Board of Pardons and Paroles, and not the Department of Corrections, has the statutory authority to release an Arizona prisoner on parole. The Board's discretion is bounded by the provisions of A.R.S. § 31-411.A, subparagraphs 1 and 2, and A.R.S. § 31-412. If a prisoner does not meet the minimum requirements of these provisions, the Board is without authority to parole that person. Therefore, if a prisoner serving an Arizona sentence in another jurisdiction is not eligible for parole under Arizona law, he or she may not be paroled on the Arizona sentence.

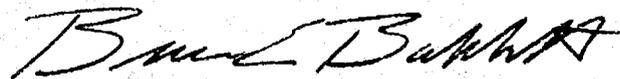
If another jurisdiction wishes to parole a prisoner from its own sentence when that inmate is not eligible for parole on the Arizona sentence or, if eligible, does not have the approval of the Board of Pardons and Paroles, the prisoner upon obtaining parole from the other jurisdiction should be remanded to the Arizona authorities for completion of the Arizona sentence. See State v. Rhodes, 104 Ariz. 451, 454 P.2d 993 (1969), cert. denied, 396 U.S. 945 (1969).

The situation involved here might well be analogized to that where an inmate is transferred out-of-state under either the Western Interstate Corrections Compact (A.R.S. §§ 31-471 et seq.) or the Interstate Corrections Compact (A.R.S. §§ 31-491 et seq.). Both compacts (and the contracts used to implement them) provide, in essence, that the fact of confinement in another state shall not deprive an inmate so confined of any legal rights which the inmate would have had if confined in an Arizona institution.

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By its terms, A.R.S. § 31-411 is a mandatory provision which gives inmates who qualify the right to be considered for release on parole. There appears to be no basis upon which the Board of Pardons and Paroles or the Department of Corrections may choose to treat inmates serving Arizona sentences in other jurisdictions concurrently with sentences imposed by such jurisdictions differently from either the in-state inmate population or the inmates serving only Arizona sentences in other jurisdictions.

Respectfully submitted,



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BEB:CMD:lc