

MIRKIN
White
Whiting

May 16, 1955
Opinion No. 55-113

REQUESTED BY: Frank A. Eyman, Warden, Arizona State Prison
Florence, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
Melvin J. Mirkin, Assistant Attorney General

QUESTION: Is it permissible for one inmate, while incarcerated, to transfer or sell real or personal property to another inmate? If so, is it legal for an official of the prison to act as intermediary, Notary Public, etc., seeing that transactions are carried out in proper legal manner?

CONCLUSION: Yes.

QUESTION: Are the above permissible if one of the principals is an inmate while the other is not?

CONCLUSION: Yes.

QUESTION: If deemed advisable by one or more of the officials at the prison, could permission for such transactions be withheld legally?

CONCLUSION: No, unless such transactions interfere with the routine and discipline of the prison.

Section 43-6116, ACA, 1939, states as follows:

"43-6116. Effect of sentence to prison on civil and personal rights. - A sentence of imprisonment in a state prison for any term less than for 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. A person sentenced to imprisonment in the state prison for life is thereafter deemed civilly dead. Such persons, however, shall not thereby be rendered incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property, and the person of such convict sentenced is under the protection of the law, and any injury to his person, not authorized by law, is punishable in the same manner as if he was not convicted and sentenced.

Mr. Frank A. Eymann, Warden
Arizona State Prison

May 16, 1955
Page Two

The conviction of a person for crime shall not work forfeiture of any property, except where a forfeiture is expressly imposed by law; and all forfeitures to the state, unless expressly imposed by law and abolished."

Although the civil rights of a convict are suspended during the term of his imprisonment, his rights to sell or convey property are especially preserved. That being so, he could transfer to, or purchase from, any person he desires. However, since the prison authorities are empowered to maintain discipline and establish a routine for the institution, any transaction between prisoners which, in the honest opinion of the prison authorities, would interfere with that routine and discipline, could be regulated.

It would be legal for an official of the prison to provide a notary public to witness prison transactions between prisoners, if the prisoners so desired. However, anything akin to the giving of legal advice must assiduously be avoided by the prison authorities.

ROBERT MORRISON
The Attorney General

Melvin J. Mirkin
MELVIN J. MIRKIN
Assistant Attorney General

LLM