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December 26, 1980

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INTERAGENCY
Mr. Robert L. Araza
Chairman
Arizona Board of Pardons
and Paroles
1812 W. Monroe, Suite 202
Phoenix, Arizona 85007

Re: I80-224 (R80-155)

Dear Mr. Araza:

This letter is in response to the following question posed by the Arizona Board of Pardons and Paroles:

What is the responsibility of the Board of Pardons and Paroles for the setting and conducting of reprieve and commutation hearings for those inmates scheduled for execution, particularly where no application for such hearing has been received from the inmate?

I. Reprieves

A.R.S. § 31-402 provides that:

A. The board of pardons and paroles shall have exclusive power to pass upon and recommend reprieves, commutations, paroles and pardons. No reprieve, commutation, parole or pardon may be granted by the governor unless it has first been recommended by the board.

B. All applications for reprieves, commutations, parole, and pardons made to the governor shall be at once transmitted to the chairman of the board, and the board shall return the applications with a recommendation to the governor.

Nothing in this or other statutes dealing with reprieves requires that a reprieve hearing be held before execution.

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The Board, under A.R.S. § 31-401(F) "may make rules and regulations, not inconsistent with law, as it deems proper for the conduct of its business." R.5-4-603.A. of the Rules of the Board of Pardons and Paroles provides that:

"the Board has the responsibility and authority to review all cases where an individual is given the death sentence and to determine whether or not there are grounds to grant a reprieve and recommend such action to the governor."

The rules then outline the "pre-hearing" and "hearing" procedures to be used by the Board in making this review. Consequently, reprieve hearings, as provided for in the Board's rules should be set "where an individual is given the death sentence."

The rule does not, however, specify whether such a hearing can be set at any time or only when the execution is imminent. A reprieve is "ordinarily an act of clemency extended to a prisoner to afford him an opportunity to procure some amelioration of the sentence imposed," Palka v. Walker, 124 Conn. 121, 125 (1938) 198 A. 265, 267 (1938). A reprieve "merely postpones the execution of a judgment for a time, and does not and cannot defeat the ultimate executions of the judgment..." Ropdreguez v. Sims, 18 Ariz. 74, 78, 156 P.94, 96, (1916).

A reprieve hearing, then, need not be scheduled where an execution is not imminent, such as where a stay of execution has been ordered.

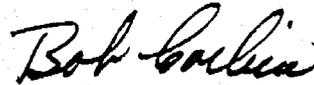
II. Commutations

The only statutory responsibilities regarding commutations are set forth in A.R.S. § 31-402 which requires that applications for commutations made to the Governor be transmitted to the Board, and in A.R.S. § 31-443 which gives the Governor the power to grant them, subject to statutory limitations. Here again, nothing in the statute requires setting of a commutation hearing for execution. However, unlike the Board's rules regarding reprieves, no commutation hearing is provided for in an execution situation, absent application by the inmate.

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The Arizona Supreme Court has held that upon timely application for commutation of death sentence, the Board of Pardons and Paroles must comply with the minimal requirements of due process by providing the prisoner notice and an opportunity to be heard. McGee v. Arizona State Board of Pardons and Paroles, 92 Ariz. 317, 320, 376 P.2d 779, 782 (1983). But, absent an application, a commutation hearing is not required.

Sincerely,



BOB CORBIN
Attorney General

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