



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

December 1, 1988

Ms. Patricia V. Gilbert, Chairman
Arizona Board of Pardons and Paroles
1645 West Jefferson, Suite 326
Phoenix, Arizona 85007

Re: I88-124 (R87-115)

Dear Ms. Gilbert:

You have asked the following three questions about the effect of subsection E of A.R.S. § 31-412 ("subsection E") on the duties of the Arizona Board of Pardons and Paroles (the "Board") toward the victims of crimes committed by inmates granted parole:

1. Does A.R.S. § 31-412(E) require the Board to hold an inmate granted parole in the Department of Corrections for a 30-day period after the Board notifies the victim that it will release the inmate?

2. Does A.R.S. § 31-412(E) require the Board to use additional resources or to conduct further investigations to identify and locate the crime victim of the inmate's impending release?

3. Does A.R.S. § 31-412(E) require the Board to apply its notice requirement retroactively, to include victims of inmates who committed crimes before the date subsection (E) was enacted by the legislature?

We conclude that subsection (E) requires the Board to schedule release of inmates granted parole not less than 30 days after notice has been sent to the last known address of the victims, and to apply the notice requirement to all inmates granted parole. Subsection (E) requires the Board to send notice to the victims most current address available in the records of the Board.

Ms. Patricia V. Gilbert
December 1, 1988
Page 2

Subsection (E) of A.R.S. § 31-412 was enacted by Laws 1987 (1st Reg. Sess.) Ch. 113 § 2 and states as follows:

At least thirty days before releasing an inmate on parole, the Board shall notify the victim of the offense for which an inmate is incarcerated or the immediate family of the victim if the victim dies as a result of the inmate's conduct and inform the victim or the family of the inmate's parole. The notice shall state the name of the inmate to be released on parole, the offense for which the inmate was sentenced, the length of the sentence and the date of admission to the custody of the State Department of Corrections. The notice to the victim or the victim's immediate family shall be mailed to their last known address.

Your first question, regarding the length of time between granting parole and release of an inmate is answered by examining the language of subsection (E). The actual words of a statute are considered first when construing its meaning. See Kriz v. Buckeye Petroleum Company, Inc., 145 Ariz. 374, 377, 701 P.2d 1182, 1185 (1985). If the words are clear and unambiguous, they are conclusive of the statute's meaning. See Jackson v. Phoenix Flight Productions, Inc., 145 Ariz. 242, 245, 700 P.2d 1342, 1345 (1985). The words of subsection (E) are clear and unambiguous: "At least thirty days before releasing an inmate on parole, the Board shall notify the victim . . . of the inmate's parole." We believe, therefore, that subsection (E) requires the Board to schedule release of an inmate granted parole in the State Department of Corrections no less than 30 days after the Board notifies the crime victim of the inmate's parole.

Your second question, whether subsection (E) requires the Board to use additional resources or to conduct further investigations to identify and locate the crime victim, can also be resolved by looking to the section's language. It provides that notice "shall be mailed to their last known address." The term "last known address" has been construed by a number of courts to mean the address the agency

Ms. Patricia V. Gilbert
December 1, 1988
Page 3

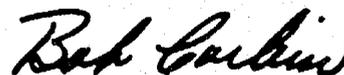
reasonably believes the person due the notice would wish it to use, which is the most current address available in the records of the agency. Wagner v. United States, 473 F. Supp. 276, 279 (E.D. Pa. 1979); Kennedy v. United States, 403 F. Supp. 619, 623 (W. D. Mich. 1975); State ex rel. Dispatch Printing Co. v. Golden, 2 Ohio App. 3d 364, 442 N.E.2d 114, 118 (1982). The burden is generally on the recipient of the notice to inform the agency of changes of address. Wagner. We believe that the Board will fulfill its duty under subsection (E) if it mails notice to the most current address of the victims in the records available to the Board.

We also believe, regarding your third question, that the Board must apply the notice requirement to include the victims of crimes committed by inmates before the date subsection (E) was enacted.

The Arizona Supreme Court has ruled that statutes that detrimentally affect parole eligibility cannot be applied retroactively to an inmate who committed a crime prior to the statute's enactment. State v. Mendivil, 121 Ariz. 600, 602, 592 P.2d 1256, 1258 (1979). However, subsection (E) has no effect on an inmate's eligibility for parole; it merely adds a duty that the Board must perform before it releases an inmate on parole. See also Berry v. State Department of Corrections, 144 Ariz. 126, 127, 696 P.2d 216 (App. 1984) (in applying parole statute A.R.S. § 31-233(G), no rational basis existed to distinguish among felony offenders based upon the date the felony was committed). Therefore, the Board must apply (E) regardless of the date the inmate committed the crime for which he is paroled.

We conclude that A.R.S. § 31-412(E) provides that the Board may not release an inmate until at least 30 days after it has mailed notice of the inmate's parole to the most current address of the victims appearing in the Board's records. The notice requirement applies to all parole decisions to include the victims of all inmates granted parole who committed crimes before the section was enacted.

Sincerely,



BOB CORBIN
Attorney General