

OPINION
64-126

September 30, 1964 (OPINION)

State Board of Administration

RE: Industrial School - Parole - Return

This is in reply to your request for our consideration of the following questions:

1. What constitutes 'parole'? Does 'parole' also include the release of a student for a short term vacation?
2. Is it permissible in accordance with 12-52-03 for the Board of Administration to order the return of a parole violator?
3. Can the Board of Administration so order a sheriff or other peace office(r) to return and deliver a parole violator back to the State Industrial School?
4. Are these provisions applicable for the return of runaway inmates?
5. Who shall pay the expenses involved in returning a parole violator back to the State Industrial School?"

We find the term "parole" variously defined by the courts of other states substantially as indicated by the following quotations from 31 Words and Phrases Permanent Edition Supplement, Page 9.

A 'parole' releases from confinement a convict who has been committed to an institution, before the expiration of his sentence. State ex rel. Herman v. Powell, 367 P. 2d. 553, 555, 139 Mont. 583."

'Parole' is not an act of clemency obliterating crime or forgiving offender, but is penological measure for disciplinary treatment of prisoners apparently capable of rehabilitation outside prison, and it does not set aside or affect sentence. Com. ex rel. Forsythe v. Myers, 189 A. 2d. 920, 921, 200 Pa. Super. 636."

A 'parole' is not a matter of right but a privilege to be granted or withheld as sound discretion may impel and is sometimes referred to as a mere matter of grace. State ex rel. Alldis v. Board of Prison Terms and Paroles, 353 P. 2d. 412, 414, 56 Wash. 2d 412."

A 'parole' is classified as a conditional pardon, and release of prisoner on parole does not amount to commutation. Ex parte Lefores, 303 S.W.2d. 394, 397, 165 Tex. Cr. R. 51."

'Parole' is nothing more than a conditional suspension of

sentence, and sentence does not expire because of the parole, nor during the pendency of the parole, and during such time the parolee is still in custody of the penal authorities and subject to provisions on which he has been paroled. Doyle v. Hampton, 340 S.W.2d. 891, 893, 207 Tenn. 399."

We do not find a more specific definition of this term with relation to the State Industrial School in either the statutes or case law of this state, excepting only as may be derived from the statutes which are cited in the letter submitted.

It is entirely possible that what is referred to in the letter of inquiry as "short-term-vacation" may be authorized under the general supervisory powers of the superintendent of the institution pursuant to the exception provided in Section 12-52-02 of the North Dakota Century Code, as amended, which states:

* * * Nothing in this chapter shall prevent the parole of any person into his own home or into a licensed foster home under one of the welfare programs administered by the public welfare board of North Dakota."

However, aside from this exception, we do not believe that such "short-term-vacations" may be permitted except pursuant to authority provided to the Board of Administration by said Section 12-52-03 of the 1963 Supplement to the North Dakota Century Code.

Section 12-52-03 of the North Dakota Century Code does authorize and permit the Board of Administration to order the return of a parole violator from the State Industrial School and to deliver a copy of such order to any sheriff, other peace officer or officer of the State Industrial School for service and return. Said Section 12-52-03 further provides that it shall be the duty of any such officer to receive the order and to apprehend and immediately to return and deliver the person named in the order to the superintendent of the State Industrial School.

Section 12-52-03 makes no reference to runaways. The proceedings outlined therein, as such, would in our opinion not be applicable to runaways excepting, of course, an individual on parole who violates parole by running away.

In the first instance it would appear that moneys credited to the inmate's account would be applicable to pay the expense of his apprehension, capture and return upon either runaway or parole violation. (See Section 12-46-20 of the North Dakota Century Code.) Where such moneys are not sufficient for such purpose, the State Industrial School itself would be liable for same.

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