

Opinion No. 52-5621

December 17, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. Louis L. Chavez Acting Chief Clerk New Mexico State Penitentiary Santa Fe, New Mexico

{*334} This is in reply to your letter of October 25, 1952 in which you request an opinion as to whether or not a prisoner serving a sentence in the Penitentiary is released by the Court on a Writ of Habeas Corpus, either for the purpose of a retrial, or is outright discharged, is such a prisoner entitled to receive \$ 25.00 allowance given by the State the same as to prisoners who serve their sentence and are released by parole or discharge.

Chapter 99 of the 1951 New Mexico Session Laws reads as follows:

"Clothing, Money, and Transportation Furnished to Prisoners on Release From Penitentiary. -- Upon the release of any prisoner, upon parole from the penitentiary, the superintendent shall provide him with suitable clothing, with twenty-five dollars (\$ 25.00) in money, and shall procure transportation for him to his place of employment, if within this State, and if not within this State then to any place within the boundaries of the State. The superintendent shall make the same provision for any prisoner discharged from the penitentiary by expiration of his maximum sentence, save that he shall procure transportation for said prisoner to his home, if within the state; if not, to the place of his conviction, or to any place within the boundaries of the state."

The above statute is mandatory and specifically provides that only where a prisoner is paroled or where a prisoner is discharged by expiration of his maximum sentence can he get the \$ 25.00 in money, with suitable clothing and the transportation to his place of employment or to any place within the boundaries of the state.

If the Legislature had intended to have provided for the payment to prisoners who are released by Writs of Habeas Corpus by the Courts before their maximum sentence is completed or for any other reason, they would have said so. It is therefore my opinion that only in cases where a prisoner is paroled or where a prisoner is discharged from the Penitentiary by expiration of his maximum sentence is he entitled to the \$ 25.00 and the other benefits provided.

Trusting that this fully answers your inquiry, I remain,