

Opinion No. 54-5918

March 11, 1954

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Morris Abram Superintendent New Mexico State Penitentiary Santa Fe, New Mexico

{*360} On January 28th you addressed an inquiry to this office concerning whether or not a given set of facts warrants the revocation of a parole.

We decline to determine whether or not the facts as presented are enough, in our opinion, to revoke a parole but set out hereinafter are our views of the law on the subject. Section 42-1706, N.M.S.A., 1941

Compilation, reads as follows:

"The said prison board shall have power to establish rules and regulations under which prisoners within the penitentiary may be allowed to go upon parole outside the penitentiary building and enclosure (one of which shall be the total abstinence from alcoholic liquors as a beverage), after having served the minimum term of his sentence, but to remain while on parole in the legal custody and under the control of the prison board and subject at any time to be taken back within the enclosure of said penitentiary; and full power to enforce such rules and regulations and to retake and reimprison any inmate so upon parole is hereby conferred upon the superintendent, whose order, certified by the clerks of the prison, with the seal of the penitentiary attached thereto, shall be a sufficient warrant for all officers named therein to authorize such officers to return to actual custody any conditionally released or paroled prisoners. It is the duty of all officers to execute said order the same as ordinary criminal process; Provided, that no prisoner shall be released on parole until the said prison board shall have made arrangements or shall have satisfactory evidence that arrangements have been made, for his honorable and useful employment, while upon {*361} parole, in some suitable home, free from criminal influences."

This Section was interpreted in the case of **Ex Parte Vigil**, 24 N.M. 640, 175 P. 714, where the Court held:

"Under this section of the statute there can be no doubt but that a parole granted under its provisions may be revoked, and that the superintendent of the penitentiary has the power to retake and reimprison any inmate upon parole, when in his judgment the terms of the parole agreement have been violated, and this he may do without notice or hearing, and for any reason which he may deem sufficient. The statute having conferred upon the superintendent of the penitentiary the power to retake and reimprison any convict so upon parole, his act of revocation is in the exercise of a sole discretion which is not reviewable by the courts. This question is settled by well-considered cases. Citing

cases: To give the statute any other construction would be to destroy the object sought to be accomplished by the Legislature. Under the statute the paroled convict is at all times in the legal custody and under the control of the prison board, and subject at any time to be taken back within the inclosure of said penitentiary. Being thus at all times in the constructive custody of the prison board, the parole convict is no more entitled to a hearing in the courts as to whether or not he has violated the terms of his parole agreement than he would be if he were a 'trusty' employed temporarily outside the penitentiary on road work or in some other service for the state."

We believe that the parole of any person may be revoked upon the exercise of such authority by the superintendent of the Penitentiary of New Mexico. We believe that he is not subject to question in the exercise of this discretion and that the revocation is a matter entirely up to him.

The procedure was quite different however under the old "conditional releases" as that form was an exercise of the Governor's pardoning power and a revocation would necessarily be by reason of the Governor's decision and not in accordance with any statute on this subject.

The Supreme Court in the case cited above has left the decision completely in the hands of the superintendent of the New Mexico State Penitentiary when the statute above quoted is followed.

Therefore it is the opinion of this office that if the facts in any given case are sufficient to satisfy you as superintendent of the Penitentiary of New Mexico, that there has been a violation of parole, then you may revoke the parole and such revocation is not subject to question so long as a proper revocation notice and warrant is issued.

We sincerely hope that this answers your inquiry.

By: Fred M. Standley

Assist. Attorney General