

Opinion No. 55-6335

December 8, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: E. B. Swope, Warden, Penitentiary of New Mexico, P. O. Box 1059, Santa Fe, New Mexico

We have your letter of November 30, 1955, in which you requested an opinion from this office upon the following questions:

1. Is a warrant suspending parole, signed by the Director of Parole or a Parole Supervisor, by of sufficient authority for me to return or cause the return of the individual named in said warrant?
2. Can the Board of Parole, by proper resolution authorize the Director of Parole or Parole Supervisor to issue warrants suspending paroles?

Section 17, Chapter 232, Laws of 1955, reads as follows:

"At any time during release on parole the board may issue a warrant for the arrest of the released prisoner for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the prisoner. The warrant shall authorize the superintendent of the correctional institution from which the prisoner was released to return such prisoner to the actual custody of the institution or to any other suitable detention facility designated by the board; if the prisoner is out-of-State, the warrant shall authorize the superintendent to return him to the State. Any parole supervisor may arrest such prisoner without a warrant or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of said parole supervisor, violated the conditions of his release. Such written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention shall be sufficient warrant for the detention of the parolee. The parole supervisor after making an arrest shall present to the detaining authorities a similar statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the prisoner shall remain incarcerated in such institution."

This section provides three methods for the return of a parole violator. The Parole Board may issue the warrant for the arrest of an alleged parole violator, and this warrant authorizes the Superintendent to either return the parole violator or detain him at any other suitable detention designated by the Board. There is a second provision which authorizes the Parole Supervisor personally to arrest a parole violator without a warrant. The Parole Supervisor may deputize any other officer with power to arrest by giving such officer a written statement that in the Parole Supervisor's judgment the prisoner

has violated his conditions of release. This statement by the Parole Supervisor is sufficient warrant to hold the parolee. If the arrest is made by the Parole Supervisor, he must give to the detaining authorities a statement of the circumstances of violation.

In view of the provisions of the statute, we would answer your first question as follows:

(a) There is no authority for the Director of Parole or a Parole Supervisor to issue a warrant in the name of the Parole Board.

(b) A Parole Supervisor can personally arrest a parole violator and, if he does, he must furnish a written statement setting forth the facts of violation and this is sufficient for the detention authorities to hold the parolee.

(c) The Parole Supervisor, by issuing a written statement that there has been a violation of parole in his judgment, may deputize an officer to arrest a parole violator and this statement is sufficient authority to hold the parolee.

Your attention is called to the fact that the calling an instrument a warrant is really unimportant. The substance of the instrument is controlling; therefore, if the instrument, signed by the Parole Supervisor, sets forth the facts of violation, it would be sufficient regardless what name is applied to the instrument.

With reference to your second question, we are of the opinion that there is no authority for the Board of Parole to authorize the Director of Parole or a Parole Supervisor to issue warrants suspending paroles. In view of the statute above quoted, there would be no need for such authority from the Parole Board. The statute has provided the necessary authority for Parole Supervisors to arrest for parole violations.

Trusting we have answered your questions, we remain

By Paul L. Billhymer

Assistant Attorney General