

Opinion No. 56-6346

January 9, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Harold R. Swenson, Acting Warden, Penitentiary of New Mexico, P. O. Box 1059, Santa Fe, New Mexico

Mr. E. B. Swope, your predecessor, submitted for our opinion the following:

When may a prisoner be eligible for parole when he has been sentenced for a period of not more than five years under § 40-21-8, N.M.S.A., 1953, considering that since the last Legislature the District Courts no longer have the discretion to sentence for any term other than as the law provides, and considering that the above section does not provide for a minimum and only provides that the maximum term shall not be more than five years.

Your attention is called to § 41-17-24, N.M.S.A., 1953, Pocket Supplement, wherein is listed the periods of time that a prisoner must serve before he becomes eligible to appear and seek parole from the Parole Board. Subsection 1 of that statute provides that:

"Prisoners may become eligible for parole hearing after they have completed one-third of their minimum sentence; however, they must have a clear conduct record for at least six (6) months prior to their appearance before the parole board."

It is seen that prisoners must complete one-third of their minimum sentence before they are eligible to appear for a parole hearing. However, where no minimum sentence is prescribed, as will be the case in many instances, it would seem, and this office holds as its opinion, that eligibility for parole hearing is attained at the end of six months.

By Santiago E. Campos

Assistant Attorney General

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