

Opinion No. 56-6371

January 27, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. Wm. J. Cooper, Director of Parole, P. O. Box 1219, Santa Fe, New Mexico

You have presented to this office for our opinion the question:

May the present Board of Parole cancel a "detainer" issued by the old Board of Penitentiary Commissioners acting in its former capacity as a parole agency?

You describe the situation which raises the question as follows: The former board granted a parole to a convict in the State Penitentiary. Thereafter that convict, while on parole, committed a new felony and was incarcerated in a Federal prison. The commission of the felony occurred prior to the passage of the Parole Act of 1955 and the old board filed its "detainer" with the Warden of the Federal prison where the convict was incarcerated.

It is assumed that you desire to cancel the "detainer" and thus the request above.

As you know, prior to the passage of the Parole Act of 1955, Chapter 232, Laws of 1955, the Board of Penitentiary Commissioners, in addition to their general duties as the governing body of the State Penitentiary, were constituted a Parole Board. See § 41-17-3, N.M.S.A., 1953, now repealed. It was in its capacity as a Parole Board, as distinguished from its capacity as governing body of the Penitentiary, that the old board upon a violation of a parole issued its warrant and request to hold, which is termed by you a "detainer".

The authority of the Board of Penitentiary Commissioners to act as the paroling agency has now been taken from them and that authority has been transferred to a new board under the Parole Act of 1955. It will be noted that § 17, Chapter 232, Laws of 1955, now prescribes the procedure to be followed in returning to the State Penitentiary a person who has violated the conditions of his parole and it prescribes the manner in which the Parole Board may issue its warrant for the return of a parole violator.

Thus, it seems to us, and we hold it as our opinion, that the issuing and cancellation of detainers is properly a matter for the parole agency of this State, and, therefore, when the new Parole Board was created by Chapter 232, Laws of 1955, all the parole functions and authority of the old board were transferred to the new. It follows, therefore, that the new board has authority to cancel, if it deems such advisable, an outstanding detainer or warrant based upon a violation of parole under the previous act.

We trust the above answers your inquiry satisfactorily.

By Santiago E. Campos

Assistant Attorney General