

## Opinion No. 56-6509

August 10, 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 asked for our opinion on the question as to whether or not your Board may permit members of the press to attend Parole Board interviews with inmates of the State Penitentiary at the time that the Board is considering applications for parole.

On this question, in the balance, on the one hand, lies the legitimate interest of the public to be informed of the actions of its officials through the medium of the free press; on the other, lies the not less important interest of the public in the reformation of those who having broken our laws are deemed worthy of an opportunity to again take their place in society. There are those who would argue that in striking the balance, the net gain to the public lies in a free and open report of each and every detailed factor considered by members of the Board in arriving at its decision to grant or withhold parole in a given case. But the issue may have valid argument on the other side.

Essentially, parole is based upon the very basic and very human idea that, given an opportunity, those who have committed crimes may yet reform. It implies to an extent a burying of the past. Now that past, as reflected in records available to the Parole Board, is its yardstick for determining the propriety of parole in a given case. It might be argued that, generally, the gain to the public in an individual's reformation might best be secured by something less than the fullest disclosure in the public press of that individual's past. However this may be, this office makes it clear that it takes no position on either side of the issue. You have presented a question, the answer to which, we think, has been provided by our Legislature.

Section 41-17-24, N.M.S.A., 1953, creating parole authority and procedure provides in part:

"The board shall consider all pertinent information regarding each inmate, including the circumstances of his offense, the reports filed under section 12 (41-17-23) above, his previous social history and criminal record, his conduct, employment and attitude in prison, and the reports of such physical and mental examinations as have been made."

Section 41-17-23, N.M.S.A., 1953, provides that:

"Where a defendant is convicted of a crime and sentenced to a state correctional institution, the sentencing court shall transmit a copy of any presentence investigation or other report on the defendant to the institution and to the parole board."

And the strongest direction on this question is contained in § 41-17-18, N.M.S.A., 1953, which provides:

**"All social records, including pre-sentence reports, pre-parole reports and the supervision histories, obtained in the discharge of official duty by any member or employee of the board shall be privileged and shall not be disclosed directly or indirectly to anyone other than the board;** Provided that the authorities of the correctional institution in which the prisoner is confined shall have access to all records and reports concerning the prisoner, and the parole authorities shall have access to all records concerning the prisoner. The board may, in its discretion, whenever the best interest or welfare of a particular prisoner makes such action desirable or helpful, permit the inspection of the reports or parts thereof by the prisoner or his attorney." (Emphasis supplied)

Now, as this office understands it, the Board meets in Santa Fe at regular intervals to study and pass upon applications for parole. Your letter indicates that with the number of applications to be acted upon, time limitations necessarily require that all or most of the Board's study of the cases before it be conducted while the Board is in session and, of course, consideration of the cases requires review and study of those records, the contents of which § 41-17-18 provides shall

". . . be privileged and shall not be disclosed directly or indirectly to anyone other than the board; . . ."

If in the Board's deliberations any reference is made to any of these records, such references and the information contained therein must be made under circumstances such that the prohibited disclosure may not occur. It is the Board's duty, imposed by the Legislature, to keep and guard this information from those not authorized to receive it. And the statute makes no exception of members of the press, even if these would not divulge the information further.

Should a procedure be formulated where, at some stage, no need for reference to or discussion of these records is necessary, then possibly at this time members of the press could attend. At such times as these records are not being discussed, it would seem to us that it is within your discretion to permit the attendance of members of the press. Whether or not, as a practical matter, such a procedure could be worked out is something upon which we can advance no suggestions. In the interest of public information, but bearing in mind the limitations of the statute, your study and attention on such a procedure would be merited.

You indicate further that

". . . The minutes of the Parole Board meetings are distributed to the Governor's office, to the Warden, and a copy is retained in the Parole Office, and it appears that these minutes have been made available to the Press upon request . . ."

Regarding this, you ask:

"Is this policy in conformity with the Act?"

We see no objection to a distribution to the press of the minutes of the Board's meetings so long as these do not contain references or information secured from privileged records covered by § 41-17-18. It does not seem to us that a prohibited disclosure would occur where the minutes contain no more than the Board's action upon the cases considered.

The above is the opinion of this office on the questions presented. However, in this connection, and for what it may be worth, the following is a summary of the attitudes of different states upon the matter of press representatives being present at parole hearings. This information was received by letter from the various state and federal authorities administering parole systems, and is not based upon a study of statutory provisions dealing with the matter.

Of those answering inquiry, 24 states and the Federal Government acting through the U.S. Board of Parole indicate a definite general policy against permitting members of the press to be present at parole hearings. Typical remarks from this group are:

". . . We do not have any representative of the press present. Our parolees go out and the violators are returned without the public knowing anything about it."

"We do not permit newspaper reporters at our parole hearings. We do find special cases in which the press has a special interest, and in those cases the Board will, upon inquiry, advise the newspaper people of its decision with a brief statement of the reasons for such decision."

". . . As a general rule, newspaper reporters are not permitted to attend parole board hearings in this State . . . From its inception in 1930, the Board of Parole in this State has acted upon the premise that a prisoner is entitled to a private hearing both as to his parole consideration and also as related to any violation of parole . . . As a matter of policy, the Board retains the right to issue or withhold information for publication with respect to individual cases."

"The policy of our Board is that no person interested in a particular case may attend a Board meeting at which prisoners appear before the Board for parole consideration. In fact, no visitors are allowed, except by invitation of the Board."

We have had no difficulty with the press because of this ruling, as they would be given permission to attend if they made proper application; however, our relationship with the press has been very good and the press is uniformly of the opinion that there is little news value in the average parole hearing."

"Our Board established a policy many years ago which declared that our parole hearings are private hearings and we do not allow the presence of anyone at those hearings other than the Parole Board members, the inmate, and possibly staff members of the Parole Board."

Six states indicated an unqualified policy of permitting members of the press to be present.

Three states indicated that they had no definite policy on the matter since newspapers had expressed no interest in these sessions and, therefore, the occasion for adopting a policy had not been presented.

In a group of eleven states, the press is allowed to attend only at certain proceedings before the Parole Board, but not at others. In this group, generally, interviews with inmates and the deliberations and voting by members of the Boards are considered confidential. The results, generally, are given to the press.

We trust the above answers your questions and is of help to you.

By Santiago E. Campos

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