

Opinion No. 57-21

February 11, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

TO: H. R. Swenson, Superintendent, Penitentiary of New Mexico, Santa Fe, New Mexico

QUESTIONS

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1. Does the Board of Penitentiary Commissioners have authority to itself authorize, or delegate to the Superintendent the power to authorize, meritorious awards to employees by way of cash benefits?
2. Does the Board of Penitentiary Commissioners have authority, or may it delegate to the Superintendent the power to authorize, cash awards to inmates of the Penitentiary for exceptionally outstanding acts of benefit to other inmates, employees of the Penitentiary, or of general benefit to the State?

CONCLUSION

1 No.

2. No.

OPINION

ANALYSIS

It is true that § 42-1-1, N.M.S.A., 1953 Comp., gives broad statutory power to the Board of Penitentiary Commissioners. Furthermore, § 42-1-6 gives authority to the Superintendent by and with the approval of the Board of Penitentiary Commissioners to employ necessary personnel at the Penitentiary. Nevertheless, we fail to find in either of the above cited sections, or in any provision of the law relative to the State Penitentiary, authority in either the Board directly or through delegation to the Superintendent to provide for meritorious awards to Penitentiary employees. And this is so no matter how commendable the act done, or the evident courage exhibited in performing the same.

Insofar as the second propounded question is concerned, Art. XX, § 15 of the Constitution of New Mexico, clearly contemplates that the prisoner shall perform labor and that they shall receive certain earnings. The Board of Penitentiary Commissioners is given broad rule-making powers by virtue of § 42-1-1, (1), N.M.S.A., 1953 Comp.,

1955 Supplement. However, the purpose of such rules is restricted by that section by its very terms as follows: "as shall best accomplish their rehabilitation." ('Their' meaning the prisoners.)

We do not believe that such statutory rule-making authority encompasses the power to provide for cash awards to inmates for exceptionally outstanding acts. We reach the same conclusion as to § 42-1-19, N.M.S.A., 1953 Comp., which gives the rule-making power to the Board of Penitentiary Commissioners "for the government, discipline and police of the Penitentiary." We feel that the above reasoning as to payment of prisoners is further buttressed by the provisions of § 42-1-49. 1, N.M.S.A., 1953 Comp., 1955 Supplement. Looking at the language of this Section, we find that the Board of Penitentiary Commissioners is given rule-making power as to a plan for payment of prisoners. But this payment plan is confined to services rendered as prison labor, on the prison farm or in prison industries. Most importantly, the particular rate to be paid is based upon skilled and efficiency and shall not exceed fifteen cents per hour nor more than five hundred dollars per year. Thus we feel that this statute contemplates a scheme of regulations designed to reimburse a prisoner for services performed as labor, for the rendition of productive skills, or for working at what in private industry would be known as a trade. It is our opinion that no legal sanction exists for payment of meritorious acts of inmates, notwithstanding the commendability of the same.

Assuming that this fully answers your two inquiries, we remain