

Opinion No. 57-33

February 27, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Santiago E. Campos,
Assistant Attorney General

TO: Director of Parole, P. O. Box 1219, Santa Fe, New Mexico

QUESTIONS

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1. "Is a parolee, who is being held in jail for investigation of parole violation, entitled to make bond?"
2. "Is an out-of-state parolee, who is under our (Parole Board's) supervision under the terms of the Interstate Compact, eligible to make bond under the same circumstances or after he has been arrested and placed in jail pending clearance with the sending state?"

CONCLUSIONS

1. No.
2. No.

OPINION

ANALYSIS

Article 2, Section 13 of our Constitution provides:

"All persons shall beailable by sufficient sureties, except for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

At first blush, the constitutional provision above would seem to insure the right to bail in all cases. However, it has been generally held under constitutional provisions such as ours that the constitutional guarantee to bail exists only until the time of conviction and not thereafter. See 19 A.L.R. 804.

After conviction, but pending a review of conviction, the right to bail depends upon whether or not a statute creates that right. 8 C.J.S. 68.

After the affirmance of conviction or where there is no appeal but the conviction has become final by the passing of the period in which an appeal may be taken, bail thereafter is not allowed. 8 C.J.S. 75.

Now, although I can find no cases specifically on your questions, it is, nevertheless, my opinion that a parolee has no right to bail unless a statute permits it. I reason as follows:

"Bail, in criminal cases, is intended to combine the administration of justice with the liberty and convenience of the person accused. One purpose of its allowance is to prevent the punishment of innocent persons. Another object is to secure the presence of the person charged with crime at his trial, or at any other times when his presence may lawfully be required, and to force him to submit to the jurisdiction and the punishment imposed by the court" 8 C.J.S. 49.

Looking at the basic purposes of bail, it is seen that the reasons therefor do not apply where a conviction has been had and that conviction is final. This, of course, is the situation of a parolee. There is no danger that an innocent person may suffer punishment. Guilt has been established.

Finding no statute which extends the right to bail to parolees in the classes mentioned by you, the questions presented are answered in the negative.

Regarding your second question, it may be pointed out that our extradition statutes, in §§ 41-19-5 and 41-19-16, N.M.S.A., 1953 Compilation, provide for bail in certain instances. These provisions for bail, however, would not apply in the circumstances which you present in the second question, since, in the case where you are supervising an out-of-state parolee under the Interstate Compact, extradition has been waived. See Attorney General's Opinion No. 6476. It may be that an out-of-state parolee **not** under your supervision under the terms of the Interstate Compact may be entitled to bail under the extradition provisions indicated above.