

Opinion No. 58-109

May 29, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Mr. Joseph C. Gardner, Superintendent, New Mexico Boys' School, Springer, New Mexico

QUESTION

FACTS - QUESTION

An individual under the age of 18 was sentenced to imprisonment for the commission of a felony. The individual was to be confined in the New Mexico Industrial School at Springer until 21 years of age or further order of the Court. "Beginning . . . when 21 years of age to be transferred to the State Pen."

Would the time spent in the New Mexico Boys' School count towards his eligibility for consideration for parole?

CONCLUSION

Yes.

OPINION

ANALYSIS

Your inquiry has raised a question subsidiary to the specific one that you ask. This subsidiary question deals with the right of the Court to sentence in accord with the above. Bearing in mind that the individual involved was, at the time of sentencing less than 18 years of age and that the time of sentencing was prior to the 1955 amendment, we are compelled to consider the situation as it existed at the time of sentencing, namely, December 9, 1954.

At that time, Sec. 41-17-1, N.M.S.A., 1953 Comp., read:

"Every person who shall be convicted under a felony or other crime punishable by imprisonment in the penitentiary, if judgment be not suspended or a new trial granted, shall be sentenced to the penitentiary . . ."

Also in effect was Sec. 42-4-1 reading:

"The New Mexico Reform School at Springer . . . shall be used for the detention, reformation and instruction of boys under 18 years of age who may be convicted of any offense less than murder or manslaughter, . . ."

The latter quotation comes from Sec. 1, Ch. 114, of the Laws of 1927. The former from Sec. 1, Ch. 32, Laws of 1909.

Reluctant as this office is to effect amendment or repeal of statutes by implication, we see no alternative save to do so in this instance to such extent as Sec. 41-17-1 is inconsistent with Sec. 42-4-1. Hence, this office is of the opinion that the sentence in the case of the individual herein was an authorized one at the time of making.

In this regard, although it is not directly pertinent to the individual on which your inquiry is based, it would appear to be of interest to mention that Sec. 1, Ch. 150, Laws of 1955, re-enacts the quotation offered above as Sec. 41-17-1. Inasmuch as this situation has no pertinence to your question, this office does not feel called upon to consider it.

In 1955, the Legislature passed Ch. 150 and Ch. 232, also known as the "The Parole Act of 1955". This office will not go into detail indicating the full nature of the authority conferred on the parole board but will choose a single quotation to indicate the extent of this authority. Sec. 41-17-24 reads:

"The Board (referring to the Parole Board) may release on parole any person confined in any correctional institution administered by state authorities, except persons under sentence of death, when the prisoner gives evidence of having secured gainful employment or satisfactory evidence of self-support and the Board finds in its opinion the prisoner can be released without detriment to himself or to the community . . ."

The above quotation would appear to make quite plain the intent of the Legislature that the Parole Board may consider time spent in any correctional institution of the State when considering parole for the inmate.

Several other provisions of the Parole Act of 1955, such as Sec. 41-17-23, support this view. This latter section states:

"Where a defendant is convicted of a crime and sentenced to a state correctional institution, the sentencing court shall transmit a copy of any pre-sentence investigation or other report on the defendant to the institution and to the Parole Board."

Hence, this office is of the opinion that the Parole Board entirely within its own discretion may consider the time spent at the New Mexico Boys' School.