

## Opinion No. 71-25

February 16, 1971

**BY:** OPINION OF DAVID L. NORVELL, Attorney General

**TO:** Howard Leach Secretary of Corrections Department of Corrections Post Office Box 2325 Santa Fe, N.M. 87501

### QUESTIONS

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Do the provisions of Section 41-17-18. N.M.S.A., 1953 Compilation prevent the sending of copies of requested file materials to Attorneys through the mails for their inspection?

#### CONCLUSION

See analysis.

### OPINION

#### {\*41} ANALYSIS

Section 41-17-18, N.M.S.A., 1953 Comp. is set out:

Protection of records. -- All social records, including presentence reports, pre-parole reports and supervision histories, obtained by the board are privileged and shall not be disclosed directly or indirectly to anyone other than the board, director or sentencing judge, but authorities of the institution in which the prisoner is confined shall have access to all records and reports concerning the prisoner and the sentencing judge, board and director shall have access to all records concerning the prisoner. The board, in the case of parole records, and the sentencing judge, in the case of probation records, in their discretion, whenever the best interest or welfare of a particular probationer or prisoner makes such action desirable or helpful, may permit inspection of the reports, or parts thereof, by the probationer, prisoner or his attorney.

Thus, we must conclude that attorneys for the prisoners would not be able to have mailed to them social records, presentence reports, pre-parole reports and supervision histories.

In the discretion of the Parole Board, parole records may be made available to a prisoner's attorney whenever the best interest or welfare of the prisoner makes such action desirable or helpful. Section 41-17-18, **supra**, does not define the word parole records with any particularity. Therefore our opinion is limited strictly to the question of the sending of the appropriate parole records through the mails for inspection by the

prisoner's attorney. Section 41-17-18, **supra**, is concerned with allowing the inspection of the records. It does not dictate the method or place where such may be done. Under general rules of statutory construction, it would be permissible to allow this practice. See **City Commission of Albuquerque v. State ex rel. Nichols**, 75 N.M. 438, 405 P.2d 924 (1965), where the Court stated that statutes should be construed in the most beneficial way of which the language is susceptible, to prevent absurdity, hardships or injustice, to favor public convenience and to oppose all prejudice to public interest.

The decision to allow probation records to be mailed to an attorney is within the discretion of the sentencing judge.

By: Frank N. Chavez

Assistant Attorney General