

Opinion No. 12-937

August 22, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Mr. John B. McManus, Superintendent of the Penitentiary, Santa Fe, N. M.

FINE AND COSTS.

Superintendent of penitentiary must be guided by order of the court committing a convict in regard to confinement on account of nonpayment of fine or costs.

OPINION

{*89} Referring to the matter of the confinement of prisoners in the penitentiary on account of non-payment of fine or costs, after the expiration of the term for which they were sentenced, about which you orally asked me yesterday afternoon, I have to say that I believe there is now no statute on this subject, and you must be governed by the terms of the commitments received from the courts.

Down to 1909 the statute in force on this subject is to be found in Section 832 of the Compiled Laws of 1897 which in substance provided that any person committed for the non-payment of fine or costs, or both, should be imprisoned one day for each dollar, with the proviso that if he should make a poverty affidavit he should not be kept in custody for more than six months, although the amount of fine and costs should exceed \$ 180. In 1909, however, the legislature {*90} adopted an act which is printed as Chapter 45 of the laws of that year, which provided in its first section for additional good time allowance to convicts working outside the penitentiary, and in the second section that convicts should not be required to serve more than thirty days on account of any fine or costs. In 1912, by an act which will be Chapter 53 of the laws of that year when published, a different provision was made as to good-time allowance, and the whole of Chapter 45 of the Laws of 1909 was repealed, but this last act of 1912 does not go into effect until September 7, and when it does go into effect we will be left without any statutory provision as to the confinement of convicts in the penitentiary on account of fine and costs, because by what will be Chapter 21 of the Laws of 1912 it has been enacted that whenever an act is repealed which repealed a former act, such former act shall not thereby be revived unless it shall be expressly so provided. Now the act of 1909 so far as convicts in the penitentiary are concerned, operated to repeal Section 832 of the Compiled Laws of 1897, and the specific repeal of the act of 1909 does not restore the earlier statute. Therefore, it would seem that your only guide, as hereinbefore stated, is the order which you may have from the court which committed the convict.

This is a matter as to which we should have specific legislation, but if any case of peculiar hardship should arise before the legislature has an opportunity to act, I suggest

that you should lay such case before the Governor for his action, as he could commute so much of the sentence as requires confinement until the fine or costs are paid.