

## Opinion No. 15-1499

April 17, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Hon. W. C. McDonald, Governor of New Mexico, Santa Fe, New Mexico.

**As to power of governor to commute a sentence of a term in the penitentiary to a fine.**

### OPINION

{\*83} I have before me your letter of even date herewith in which you say that you have been asked to commute the sentence of a term in the penitentiary to a fine and that you are doubtful as to your authority to do this. You further say that you will be glad to have my opinion as to whether you can commute a sentence of imprisonment to a fine and release the convict upon payment of that fine, and that you are anxious to have that opinion as soon as possible, today if I have time to give it to you.

I have not had time to make any extended search for adjudicated cases as to the power of a governor to commute a sentence of an imprisonment to a fine, but from a hasty examination, it seems to me doubtful if any case exactly in point can be found. As a matter of reasoning, however, it appears to me on principle that the law must be that if the sentence is for imprisonment only, a governor could not commute the sentence of imprisonment to a fine as that would be an invasion of the power of the court to fix the nature of the punishment. If the sentence of the court was for both fine and imprisonment as must be the case under many statutes, I believe that the governor could commute a part of the punishment whether by way of reduction of the term of imprisonment or reduction of the fine or both, or even by reducing the punishment to the fine only. If the convict, however, has been sentenced under a statute which fixes imprisonment only as the punishment, I cannot believe that the governor would be authorized to change the nature of the punishment and inflict one which was wholly unauthorized by the statute. In our statutes can be found a great number upon the subject of crimes, in many of which the punishment must be both fine and imprisonment, while in others it may be fine or imprisonment, or both, in the discretion of the court and in perhaps the greater number, the punishment is imprisonment only.