

Opinion No. 23-3678

March 3, 1923

BY: JOHN W. ARMSTRONG, Assistant Attorney General

TO: Requested by: Hon. John B. McManus, Superintendent of the State Penitentiary, Santa Fe, New Mexico.

State Prison Board May or May Not, at its Discretion, Require Payment of Costs as a Condition Precedent to Parole.

OPINION

{*23} Your query: "When the judgment and sentence of the court provides for maximum and minimum sentence, and that the defendant pay the costs, is payment of the costs a condition precedent to parole?"

Section 5079, New Mexico Statutes, Annotated, Codification 1915, provides for the parole of the prisoner after he has "served" the minimum **term** of his sentence." The word "term" relates only to time and has no reference to other provisions of the judgment and sentence.

Section 5085 of said Codification provides that "all convicts sentenced to the State Penitentiary who have a fine or costs, or both, attached to such sentence shall not be required to serve more than thirty days for such fine or costs." This provision appears to make the term necessary for the payment of costs largely discretionary with the Prison Board. The Prison Board has power to establish rules and regulations governing paroles and would probably have authority to make the payment of costs a condition precedent to a parole. Where the convict or his relatives are financially able to make this payment, the Board probably should make such requirement.

If such prisoner shall violate his parole and be returned to the penitentiary to serve out his maximum sentence then, we should say that the costs must be paid or service required as provided by said section 5085.

Wherefore, in paroling any prisoner, the Board may or may not, in the discretion of such Board, require the payment of costs as a condition precedent to parole.