

Opinion No. 31-329

December 15, 1931

BY: E. K. Neumann, Attorney General

TO: Honorable E. B. Swope, Supt., New Mexico State Penitentiary, Santa Fe, New Mexico.

{*122} In your letter of December 14th, you refer to the case of a person who has served one term in a State Reformatory, one term in a State Penitentiary and is again convicted and sentenced to the Penitentiary.

You desire to know whether or not a prisoner having the above status is eligible for parole.

It is provided in Section 130-171 of the 1929 Compilation as follows:

"All paroles herein provided for shall be approved by the Governor before the same shall be valid, {*123} and no person who has served two previous terms in a Penitentiary shall be eligible for parole under this article."

The determination of this case, therefore, depends upon the meaning of the term "Penitentiary." From our examination of the authorities, it is our opinion, that the term "Penitentiary" refers to a state penal institution in which felons are confined and punished by means of various corrective methods.

It is also stated that in the United States the term "Penitentiary" is used in the sense of its being a State Prison rather than a Reformatory. Also this office held orally, some few days ago, that confinement in the United States Disciplinary Barracks at Fort Leavenworth, Kansas was not confinement in the Penitentiary in the sense in which it is used in our statute.

Under the foregoing authorities, therefore, it is the opinion of this office that the case to which you have referred in your letter would be eligible for parole. In other words, unless the prior service of, at least, two terms has been in a State Penal Institution, that is Penitentiary, in the sense to which we have heretofore referred, the prisoner would be eligible for parole.

By Frank H. Patton,

Asst. Attorney General