



352
1939

OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

May 1, 1939

Hon. J. B. Keith, Chairman
Board of Pardons & Paroles
Austin, Texas

0-689

Dear Sir:

Opinion No. 689
Re: Insanity of prisoner as affect-
ing commutation of death sentence.

By your letter of April 24th, you asked the opinion
of this Department upon the following question:

"May the Board of Pardons and Paroles recommend
and the Governor grant a commutation of the death
sentence of Pete McKenzie, now adjudged insane and
confined in the penitentiary?"

You refer to our opinion of January 11, 1939.
The question you now present was not discussed in that opinion,
since the question presented by you at that time had to do
solely with the procedure to be followed in trying the issue
of sanity in the event of a commutation of the death sentence.

The insanity of McKenzie has no effect upon the
authority of the Board of Pardons and Paroles to recommend
and the Governor to grant a commutation of his death sentence
to that of life imprisonment. A pardon, particularly a con-
ditional pardon, requires the consent of the convict before
it becomes effective, and an insane convict is incapable of
giving his consent. However, "a commutation is the substitu-
tion of a less for a greater punishment, by authority of
law, and may be imposed upon the convict without his accept-
ance, and against his consent." (20 Ruling Case Law 530;
Biddle vs. Perovich, 274 U. S. 480).

Trusting that this will satisfactorily answer your
inquiry, we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *R. W. Fairchild*
R. W. Fairchild
Assistant

RWF:FBP

APPROVED:

Gerald C. Mann
ATTORNEY GENERAL OF TEXAS