



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

PRICE DANIEL  
ATTORNEY GENERAL

October 5, 1948

Hon. C. H. Cavness  
State Auditor  
Austin, Texas

Attention:  
Mr. William A. Harrison

Opinion No. V-696

Re: Effective dates of clemency proclamations and the legality of payment of discharge funds 5 years after a conditional pardon is granted.

Dear Sir:

In your letter of recent date you request an opinion by this department upon the following questions:

"Under Section 10 of Article 6203, Vernon's R. C. S., the Texas Prison System is required to pay \$5.00 to each parolee who receives a Conditional Pardon.

"In checking the records of the Texas Prison System we find that during the calendar year 1948 the Prison System has made payments to parolees who received Conditional Pardons back in the year 1943. Is this procedure legal in view of our two-year Statute of Limitation?

"In our examination of Clemency Proclamations signed by the Governor, we find that the Texas Prison System is following the practice of starting Clemency on the date the convict is released from Prison, in view of the fact that specified dates are not shown in the Clemency Proclamations.

"This procedure has caused confusion as no one seems to know whether such

Clemency should become effective as of the date of the Proclamation or as of the date the prisoner is released from Prison. Will you please advise what procedure should be followed?"

Section 10 of Article 6203 of Vernon's Civil Statutes is as follows:

"Upon the discharge of any prisoner upon parole, either under the provisions of this Act, or through the exercise by the Governor of executive clemency, independent of this Act, such person so paroled, shall be furnished by the proper officers of the State Prison Board with such clothing as is usually furnished to prisoners upon discharge from prison in this State together with a railroad non-transferable ticket from the place of his discharge to the place of his conviction and sentence, and in addition thereto the sum of \$5.00."

The current appropriation for the Texas Prison System contains the following rider:

"Discharged convicts revolving fund, Twenty-five Thousand (\$25,000.00) Dollars is continued and reappropriated until September 1, 1949, to be deposited equally in the First National Bank of Huntsville and the Huntsville National Bank, and each of said Banks shall deposit with the General Manager of the Prison System, bonds or security to be approved by the Prison Board and the Attorney General of the State of Texas to secure said deposit, and this appropriation is made under and by virtue of the law of the Acts of the First Called Session of the 43rd Legislature, page 228, Chapter 104, and it is the intent of the Legislature to carry this Act out in full as provided for in Chapter 104, Acts of the First Called Session of the 43rd Legislature, and all discharged, paroled, or pardoned convicts shall be paid out of this fund from moneys earned from any source of the Prison System and deposited to this

fund under the provisions of said Chapter 104 of the Acts of the First Called Session of the 43rd Legislature."

The Prison Revolving Fund thus appropriated is a part of the State monies, and the appropriation there made is a part of the biennial appropriation and as such expires at the end of the biennium.

Answering your questions in the order in which they are above repeated, we beg to advise:

It is the opinion of this office that biennial appropriations are meant to cover items and claims for the current period for which the appropriations are made, and may not be used for purposes such as you mention of paying claims arising prior to such appropriations.

Undoubtedly, an appropriation could be made to pay an existing liability antedating the Act if the language used clearly evidenced such intention, but no such intention appears in the rider quoted. Your first question, therefore, is answered in the negative.

An executive clemency is the Act of the Governor evidenced by his proclamation. The legal effect of the proclamation is to tender to the convict the clemency therein defined, and in the terms and upon the conditions therein stated. Any clemency (especially one involving conditions) must be accepted by the convict before it becomes effective. Ex parte Frazier, 239 S. W. 972; Ex parte Davenport, 7 S. W. (2d) 589. For computing the time of the clemency, therefore, the period begins when the proclamation is made known to the Prison Manager, the prisoner has accepted the same and has been actually released thereunder.

#### SUMMARY

The appropriation of the current biennium to the Texas Prison System for paying \$5.00 to a convict receiving a conditional pardon may not be used to pay those convicts whose conditional pardons were issued prior to the Appropriation Act.

A clemency to a convict released from prison is computed, as to time, from the day

such convict is released from the Prison.

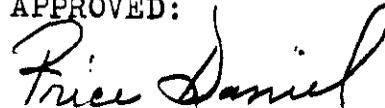
Yours very truly,

ATTORNEY GENERAL OF TEXAS

By   
Ocie Speer  
Assistant

OS:wb

APPROVED:

  
ATTORNEY GENERAL