

TRAINING SCHOOL: Boy sentenced to twenty years in 1944  
BOARD OF TRAINING SCHOOL: and committed to training school where  
he was paroled is still under juris-  
diction of training school upon  
reaching twenty-one years of age.

June 29, 1950

7-12-50

Honorable W. E. Sears  
Director, Board of Training Schools  
Jefferson City, Missouri



Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"On March 20, 1944, a boy was sentenced in the Circuit Court of Cass County, to serve twenty (20) years in the Missouri State Penitentiary on a charge of Second Degree murder. Due to the fact that the boy was a minor, fourteen years of age, the sentence was commuted to the Missouri Training School for Boys at Boonville, Missouri.

"The commitment accompanying the boy, points out that certain procedure should be followed. The circumstances of this procedure is outlined in the following notation taken from the official commitment:

"The superintendent of said training school is required to receive and safely keep, the said defendant, in the training school aforesaid, until the said defendant becomes of age, at which time it is ordered that he then be committed to the penitentiary of the State of Missouri, there to be kept, confined, and treated in the manner directed by law, until the sentence of this Court be complied with, or until the said defendant shall be otherwise discharged by due course of law."

Honorable W. E. Sears

"On or about September 12, 1946, an opinion was issued from your office in answer to a question as to whether or not the boy could be placed on parole. The conclusion as given in the opinion is as follows:

"Therefore, it is the opinion of this department that a boy confined in the Missouri Training School for Boys at Boonville, Missouri, who has met the requirements of the institution for parole, is entitled to be considered for the same even though his sentence may be for such a term that he could be confined in the State Penitentiary."

"Due to the fact that the boy has been on parole and possesses an excellent record under the supervision of the Training School Board since July 30, 1947, and knowledge that the twenty-first birthday of the boy will be realized on June 16, 1950, your assistance is respectfully solicited with regard to the following problems:

"1. Is the boy in question entitled to discharge at the time he reaches the age of twenty-one or is the Board required to turn over the custody of the boy to officials of the Missouri State Penitentiary?

"2. May the Board of Probation and Parole, who supervises adults, if they see fit to do so, parole the boy and accept supervisory responsibility without the boy being delivered into actual custody and confinement?"

It will be noted from your request that the boy in question was sentenced in 1944, and the place of confinement and the extent of his punishment are governed by the law then in effect.

There is no doubt that in this state a child under the age of seventeen years may be prosecuted under the general laws (Section 9700, R.S. No. 1939; State ex rel. Wells v. Walker, 326 Mo. 1233, 34 S.W. (2d) 124).

The request further shows that the person in question was convicted of second degree murder and was sentenced to twenty years in the Missouri State Penitentiary. Such a sentence was

Honorable W. E. Sears

proper because under Section 4378, R.S. Mo. 1939, second degree murder is punished by imprisonment in the penitentiary for not less than ten years.

Section 8998, R.S. Mo. 1939, which was in effect when the person in question was sentenced, provides, in part, as follows:

"Any person under the age of seventeen years, convicted of a crime, the punishment of which, under the statutes of this state, when committed by persons over the age of seventeen years, is imprisonment in the penitentiary for a term of not less than ten years, may be punished in the same manner and to the same extent as provided by the statutes for the punishment of persons over the age of seventeen, or, if a boy, he may be imprisoned in the penitentiary or committed to the Missouri Training School for Boys; \* \* \*"

From the above it will be seen that the circuit judge before whom the trial was had, upon a verdict being returned finding the defendant guilty of murder in the second degree, had the discretion either to sentence the defendant to the penitentiary or to commit him to the Missouri Training School for Boys. A reading of the commitment set forth in the request discloses that the defendant was committed to the training school until he "becomes of age," at which time he was to be committed to the penitentiary.

We find no cases in the state dealing with the validity of such a commitment. However, in the case of *Ex parte Grabinski*, 213 Mich. 108, 181 N.W. 704, the Supreme Court of Michigan had before it the validity of commitment of sixty days' confinement to the county jail, at the expiration of which the defendant was to be confined in the Michigan Reformatory for six months. The statute under which he was sentenced provided that the punishment should be "imprisonment in the State Prison, Michigan Reformatory, or the Detroit House of Correction, for a period of not less than six months nor more than one year, or by imprisonment in the county jail for not less than thirty days, nor more than one year, or by both fine and imprisonment in the discretion of the court." At N.W. l.c. 705, the court said:

"The amendment made at the extra session of the Legislature in 1919 was intended to vest a discretion in the court and permit sentence to a penal institution or the county jail, but not to both. When the circuit judge

Honorable W. E. Sears

sentenced petitioner to the county jail, he exercised the discretion reposed in him by law to consider the case as one demanding imprisonment as for a misdemeanor rather than a felony, and he could not make the sentence, one part as for a misdemeanor and another part as for a felony. \* \* \*

The court further said at l.c. 706:

"When a prisoner is sentenced to a designated prison, and is there confined under sentence, power of the court has been exercised and is exhausted so far as place of confinement is concerned. There is no statute or precedent so far as we can find allowing the court to sentence a prisoner to imprisonment in a designated jail or prison for a part of the punishment and to another jail or prison for another part. We must hold that the circuit court had a right to sentence petitioner to imprisonment in the county jail and there imprison him in default of the payment of the fine imposed, but not to sentence him to the county jail for imprisonment and from there to the Michigan Reformatory for imprisonment in default of the payment of the fine. Sentence must not be imposed to be served piecemeal, a part thereof in a county jail and another part in a penal institution. \* \* \*

Therefore, it would appear that the Circuit Court of Cass County in exercising its discretion under the statute, by committing the defendant to the training school, exhausted its power as to designating the place of confinement, and such commitment should read as if defendant were committed to the training school for boys.

The question which then arises, as presented in your request, is what disposition must be made by the Board of Training Schools of the boy when he reaches his twenty-first birthday.

A review of the history of the statutes prior to the Constitution of 1945 and the new Board of Training School Act (Laws of Missouri, 1947, Vol. II, page 320) reveals no intention on the part of the Legislature to restrict the confinement in the Missouri Training School for Boys to persons under the age of twenty years. Section 22 of the Laws of Missouri, 1917, page 155, provided that a person under the age of eighteen years

Honorable W. E. Sears

who was convicted of a crime, punishment of which was death or imprisonment in the penitentiary for a term of not less than ten years, could be committed to the Missouri Reformatory for a term of not less than five years. Such sentence could expire after the twenty-first birthday of the inmate. Said section also provided that the sentence of any male person between the ages of eighteen and thirty years could be commuted to confinement in the Missouri Reformatory. Section 23 of said law provided that the Governor could commute the punishment of any person under the age of thirty years who was confined in the penitentiary to commitment in the reformatory. The 1917 law remained in effect until 1927 when the age for commutation was reduced to twenty-one years (Laws of 1927, page 379).

Furthermore, Section 9673, R.S. Mo. 1939, which is still in effect and which deals with children under the age of seventeen years tried by the juvenile court as delinquents, provides that:

" \* \* \* nothing in this article shall prevent the juvenile court from inflicting a punishment which shall extend beyond the age of majority in cases where the delinquent shall be convicted of a crime, the punishment of which under the statutes of this state, when committed by persons over the age of eighteen years, is death or imprisonment in the penitentiary for a term of not less than ten years.  
\* \* \*"

Under the above section a juvenile who is found by the court to be a delinquent child because he has committed a certain type of crime may be committed to the training school for a term which will expire after he reaches his majority.

In view of the above statutes, we believe that a person who under seventeen years of age was convicted of second degree murder in 1944 and sentenced to twenty years in the penitentiary could be committed by the judge to the Missouri Training School for Boys, and the custody of such boy by the training school did not expire when the boy reached the age of twenty-one and the boy remained subject to the jurisdiction of the officials of the training school. In view of the fact that a person who has been paroled is still in constructive custody, then such custody remains in the Board of Training Schools until his sentence expires or he is sooner discharged by due course of law.

In view of the above conclusion an answer to your second question is unnecessary.

Honorable W. E. Sears

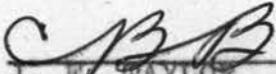
CONCLUSION

It is, therefore, the opinion of this department that a boy under the age of seventeen years who in 1944 was convicted and sentenced to twenty years in the penitentiary and was committed by the court to the Missouri Training School for Boys remains subject to the control and jurisdiction of the Board of Training Schools until the expiration of his term or until otherwise discharged by due course of law, and said boy upon reaching his twenty-first birthday should not be transferred to the Missouri State Penitentiary.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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