

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date May 12, 1967

To G. Raymond Nichols, Assistant Director

Dept. Probation and Parole

From Courtland D. Perry, Asst. Atty. Gen'l.

Dept. Mental Health and Corrections

Subject Parole Hearing - Time of Hearing - Appearance of Inmate at Hearing

FACTS:

Traditionally, the State Probation and Parole Board has held parole hearings at the Maine State Prison approximately 60 days prior to the earliest date upon which prisoners may be granted parole, i.e., 60 days prior to the expiration of the time period applicable under Title 34, M.R.S.A., 1964, §1672 to a prisoner's sentence, less earned good time.

Ray D. Beaulieu, a prisoner at the Maine State Prison, may at the earliest, be granted parole on or about June 17, 1967. Mr. Beaulieu was notified by the State Probation and Parole Board that his case would be heard at its April 14, 1967 meeting at the Maine State Prison.

Mr. Beaulieu responded by notifying the secretary of the State Probation and Parole Board that he would not appear before the Board on that date, and that after June 17, 1967 following the expiration of his minimum term of imprisonment, less earned deductions for good behavior, he would request a hearing before the State Probation and Parole Board for a consideration of his readiness for parole. The State Probation and Parole Board has postponed consideration of the readiness of this prisoner for parole.

QUESTION #1:

Is the State Probation and Parole Board's practice of holding parole hearings approximately 60 days prior to the earliest date upon which a prisoner may be granted his parole a lawful exercise of the powers of the State Probation and Parole Board, when the decision made by the Board is effective not earlier than the earliest date upon which a prisoner may be paroled?

ANSWER #1:

No.

OPINION #1:

Title 34, M.R.S.A., 1964, §1672 provides as follows:

"A prisoner at the Maine State Prison becomes eligible for a hearing by the board as follows:

1. Expiration of minimum term in minimum-maximum sentence. After the expiration of his minimum term of imprisonment less the deduction for good behavior, when the law provides for a minimum-maximum sentence;

2. Expiration of 1/2 of term in certain cases. After the expiration of 1/2 of the term of imprisonment imposed by the court

less the deduction for good behavior, when he has been convicted of an offense under Title 17, sections 1951, 3152 or 3153. This subsection applies to a prisoner who has been convicted previously of an offense under Title 17, §§1951, 3151, 3152 or 3153.

3. Expiration of 30-year term in life imprisonment cases. After the expiration of a 30-year term of imprisonment, less deduction for good behavior, when he has been convicted of an offense punishable only by life imprisonment, provided he has never been convicted of another offense punishable only by life imprisonment.

4. Expiration of 30-year term in other cases.

After the expiration of a 30-year term of imprisonment, less deduction for good behavior, when, following conviction, he has been sentenced to a minimum term of 30 years or more."

The Legislature by the language employed in §1672 has clearly, unequivocally and specifically set forth the time at which prisoners at the Maine State Prison become eligible to be heard by the State Probation and Parole Board respecting their readiness for parole. With respect to each sentence category the Legislature has prescribed that eligibility for a hearing arises "after" the expiration of a specific time period, subject in each instance to reduction by the computation of good time credits.

The language of §1672, in our opinion, makes manifest the legislative intent that prisoners be considered for parole after the time period set forth has passed, and not before; despite the broad grant of administrative authority set forth in Title 34, M.R.S.A., 1964, §1552 the Probation and Parole Board is bound to administer the provisions of §1672 in accordance with its clear terms. The Board cannot by administrative regulations supplant its policy for the prescription of the Legislature, by saying in effect that a prisoner is eligible for a hearing 60 days prior to the date upon which by application of mathematical computations the Legislature has prescribed that a prisoner is eligible for a hearing by the Board.

We are, therefore, of the opinion that the State Probation and Parole Board must hold hearings for the consideration of a prisoner's readiness for parole "after", and not before, the expiration of the time period, reduced by earned good time credits provided for in §1672.

QUESTION #2:

Is the State Probation and Parole Board bound only by the rule of reasonableness in setting a date for a parole hearing following the expiration of the time period prescribed in §1672, and not by a hard and fast rule governing the permissible time lapse between the expiration of the prescribed time under §1672, and the date of hearing?

ANSWER #2:

Yes.

OPINION #2:

Title 34, M.R.S.A., 1964, §1551 provides in pertinent part as follows:

".....The board shall meet at least once each month and in addition may meet as often as necessary, at such times and places as the chairman may designate....."

Section 1551 is the only section appearing to be applicable to the issue of time periods within which the State Probation and Parole Board must function in the conduct of parole hearings. In our opinion, the section permits the Board to exercise its discretion as to the business to be conducted at the mandatory monthly meeting, and as to the determination of the necessity for additional meetings. The rule which we believe is applicable and controlling as to the time within which the Board should hear the case of a prisoner, whose time period applicable to the type of sentence he is serving has expired, is the general rule that where no time is specified by statute for the doing of an act, and such act, (in this case the holding of the hearing) is required to be done by the language of a statute or by necessary implication therefrom, such act shall be done within a reasonable time.

QUESTION #3:

Under Title 34, M.R.S.A., 1964, §1672 is a prisoner entitled to appear personally before the State Probation and Parole Board at the hearing at which his readiness for parole is under consideration?

ANSWER #3:

Yes.

OPINION #3:

Title 34, M.R.S.A., 1964, §1672 provides in pertinent part as follows:

"A prisoner at the Maine State Prison becomes eligible for a hearing by the board as follows:"

It is the opinion of this office that the quoted language in §1672 makes mandatory the personal appearance of a prisoner at the time he is under consideration for parole. The word "hearing", as we believe it was the intent of the Legislature to be applicable to the word as used in §1672 is defined as follows:

"opportunity to be heard."

The Random House Dictionary of the English Language. The Unabridged Edition "Hearing" P. 654.

The language of §1672 refers to the prisoner personally and to his eligibility for a hearing. We find no construction applicable other than the one herein given. It should be noted, however, that the State Probation and Parole Board is in the conduct of an administrative function at parole hearings and not a judicial function.

The hearing to which reference is made in §1672 is contemplated, in our opinion, to be a fair hearing, informal and not subject to the rules of evidence, but one at which the prisoner has the opportunity to speak on his own behalf regarding his readiness for parole.

QUESTION #4:

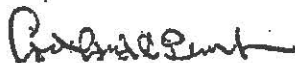
Is the State Probation and Parole Board required to respond to the request of a prisoner for the setting of a date and time for a hearing on the question of his readiness for parole?

ANSWER #4:

No.

OPINION #4:

Generally speaking there are two methods in use by which parole hearings are initiated (1) upon application of the prisoner and (2) upon initiation by the paroling authority. At one time the Maine parole hearings were initiated by application by the prisoner, which method was statutory and has not been in effect in Maine for some time. Under the parole law in effect in Maine, parole hearings are initiated by the State Probation and Parole Board, and are held at a date and time set by the Board with notice thereof given to the prisoner. There is no statutory provision under which a prisoner may apply for parole hearing. It is, therefore, our opinion, that the State Probation and Parole Board is not required to respond to the request of any prisoner for the setting of a date and time for a hearing, and that the Board in setting a date and time for a hearing with respect to any prisoner is subject only to the guideline described in Opinion #2 hereof.



Courtland D. Perry
Assistant Attorney General