

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

**This document is from the files of the Office of  
the Maine Attorney General as transferred to  
the Maine State Law and Legislative Reference  
Library on January 19, 2022**

STATE OF MAINE

Inter-Departmental Memorandum Date 12 January 1970

To Merton Johnson, Superintendent

Dept. Men's Correctional Center

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

Dept. Mental Health and Corrections

Subject Men's Correctional Center Inmate Eligibility for Parole Hearing

SYLLABUS:

An inmate of the Men's Correctional Center, in order to be eligible for a hearing before the State Parole Board, must be considered therefor by bringing to bear all three of the numbered clauses of 34 M.R.S.A. §1673, and the availability of suitable employment, without reference to the duration of confinement, and the inmate's conduct is insufficient to give rise to parole hearing eligibility. The numbered clauses of §1673 are required to be construed as conjoined by the insertion of the word "and", in order to avoid absurdity and unreasonableness patent in a contrary interpretation.

FACTS:

It is alleged that employment awaits an inmate of the Men's Correctional Center immediately upon his parole. The inmate, in question, was committed following conviction of a felony and has not served 12 months of his sentence, less good time.

QUESTION:

Can an inmate of the Men's Correctional Center who has been convicted of a felony become eligible for a hearing before the State Probation and Parole Board, prior to his completion of 12 months of his sentence, less good time, when suitable employment or situation has been secured for him?

ANSWER:

No.

REASON:

34 M.R.S.A. §1673, as amended, provides as follows:

"An inmate at the Men's Correctional Center becomes eligible for a hearing by the board as follows:

"1. Prior to the expiration of a 6-month term of commitment if convicted of

(over)

12 January 1970

- 2 -

a misdemeanor. Prior to the expiration of a one-year term of commitment if convicted of a felony;

"A. A deduction of 7 days for each month served from the date of commitment may be allowed by the superintendent when the conduct of the inmate justifies it; an additional 2 days a month may be deducted from the sentence of those inmates who are assigned by the superintendent to work deemed to be of sufficient importance and responsibility to merit such deduction;

"2. Recommendation of superintendent. Upon the recommendation of the superintendent to the board for parole of the inmate, when the conduct of the inmate justifies it;

"3. Suitable employment secured. When some suitable employment or situation has been secured for him in advance."

The issue to be resolved in reaching a determination of the question is whether the numbered clauses of §1673 are to be applied in the disjunctive, or to be considered conjoined, and applied as a unity, in order to determine an inmate's eligibility for a hearing before the State Probation and Parole Board.

Were we to conclude that the clauses are disjunctive the following would result: Although, the Men's Correctional Center, as a sentencing alternative, is available to the Courts in the cases of those persons considered by the Courts to be amenable to rehabilitative programming, including vocational training, clause 1 could be applied as a criterion for eligibility for a Parole Board Hearing, the only basis for eligibility being the passage of time in execution of sentence without reference to conduct and functioning within the institution and planned program, upon release. The Legislature cannot have intended this result. Applying clause 3 separately can produce the absurd situation wherein a person, perhaps self-employed, upon commitment to the Men's Correctional Center has suitable employment, and, therefore, is eligible for a hearing before the parole board, without reference to duration of sentence or conduct within the institution. The Legislature cannot have intended this absurd result.

We apply the following rules to reach our conclusion that the three numbered clauses must be conjoined, in order to give reasonable effect to the statute:

"Words may be inserted in or added to a statute in order to effectuate the legislative intent....Words may be supplied in

(over)

a statute in order to give it effect, or to avoid repugnancy or inconsistency with the legislative intention, .....or where omission makes the statute absurd, meaningless, irrational, or unreasonable,....." [Emphasis supplied]

Sutherland Statutory Construction, 3rd Ed.Vol.2, §4924, pp.453-456 (1943)

"....Words or phrases may however, be supplied by the courts and inserted in a statute, where that is necessary to obviate repugnancy and inconsistency in the statute, complete the sense thereof, and give effect to the intention of the legislature manifested therein.... The omitted words will not be added where they are not necessary to make the statute conform to the obvious intent of the legislature, or to prevent the act from being absurd....."

50 Am.Jur. Statutes, §234, pp. 222-223

"A statute subject to interpretation is presumed not to have been intended to produce absurd consequences, but to have the most reasonable operation that its language permits, and it is a general rule that where a statute is ambiguous in terms and fairly susceptible of two constructions, the unreasonableness or absurdity which may follow one construction or the other may properly be considered... ..If possible, doubtful provisions should be given a reasonable, rational, sensible, and intelligent construction. Unreasonable, absurd, or ridiculous consequences should be avoided....."

50 Am.Jur. Statutes, §377, pp.385-387

Following the above rules, in order that §1673 be construed reasonably, we find it necessary to view the word "and" as omitted from between the numbered clauses and thus, avoid the absurd and unreasonable results, which would flow from construing the numbered clauses to be in the disjunctive.

We are, therefore, of the opinion that an inmate of the Men's Correctional Center, in order to be eligible for a hearing before the State Parole Board, must be considered therefor by bringing to bear all three of the numbered clauses of 34 M.R.S.A. §1673, and that availability of suitable employment, without reference to the duration of confinement, and the inmate's conduct, is insufficient to give rise to parole hearing eligibility.

Courtland D. Perry  
Assistant Attorney General