

# MAINE STATE LEGISLATURE

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April 1, 1975

David E. Redmond

Executive Council

Conditional Pardons--Enforcement and supervision

You have asked the following two questions of this office respecting conditional pardons:

1. What are the statutory provisions available to the Governor and Council respecting policing of the person conditionally pardoned?
2. May the Governor and Council utilize the Bureau of Probation and Parole for supervision?

Statutes pertinent to question 1 are as follows:

15 M.R.S.A. § 2163:

"In any case in which the Governor is authorized by the Constitution to grant a pardon, he may, with the advice and consent of the Council and upon petition of the person convicted, grant it upon such conditions and with such restrictions and under such limitations as he deems proper, and he may issue his warrant to all proper officers to to carry such pardon into effect; which warrant shall be obeyed and executed instead of the sentence originally awarded."

15 M.R.S.A. § 2164:

"When a convict has been pardoned on conditions to be observed and performed by him, and the Warden of the State Prison or keeper of the jail where the convict was confined has reason to believe that he has violated the same, such officer shall forthwith cause him to be arrested and detained until the case can be examined by the Governor and Council; and the officer making the arrest shall forthwith give them notice thereof, in writing."

15 M.R.S.A. § 2165:

The Governor and Council shall, upon receiving the notice provided for in section 2164, examine the case of such convict, and if it appears by

his own admission or by evidence that he has violated the conditions of his pardon, the Governor with the advice and consent of the Council shall order him to be remanded and confined for the unexpired term of the sentence. In computing the period of his confinement, the time between the pardon and the subsequent arrest shall not be reckoned as part of the term of his sentence. If it appears to the Governor and Council that he has not broken the conditions of his pardon, he shall be discharged.

30 M.R.S.A. § 1001:

"Sheriffs shall obey all such orders relating to the enforcement of the laws as they from time to time receive from the Governor."

"Policing" in this context appears to have two components; (a) the conditions of the pardon; e.g., a condition that the person pardoned report periodically to a particular place or person for a particular purpose and (b) supervision of the pardoned person's execution of the conditions of the pardon.

It is important to note that the conditions to which the person conditionally pardoned is subject are entirely a matter for determination by the Governor and Council, the authority therefor being given to them by the Maine Constitution, Article V, Part 1, § 11. The legislation above quoted; i.e., 15 M.R.S.A. § 2163-2165, has no bearing upon the conditions. Noted below is language of the Supreme Judicial Court relating to the power of the Governor and Council respecting commutation of sentences. The same power is possessed by the Governor and Council as to conditional pardons.

" . . . [T]he authority of the Governor and Council is derived from the Constitution and it may commute the sentence with such restrictions as may be deemed proper. If the restrictions and limitations imposed are in conflict with the provisions of any statute, then such statute does not control and it may be ignored as it was in this case, provided such restrictions or limitations are not illegal, immoral, or impossible to perform."

Boston vs. Robbins, 153 Me.128 at 130.

The real importance of the above quoted statutes is the extent to which the legislature has made available to the Governor and Council means by which to supervise the person conditionally pardoned. In order to determine the "means" we must determine which officers are "proper officers" within the contemplation of 15 M.R.S.A. § 2163. Sheriffs are the only law enforcement officials with respect to whom we find a statutory provision leading us to the conclusion that such officers may be considered "proper officers" for the purpose of supervision of a person conditionally pardoned. We base such conclusion on the language of 30 M.R.S.A. § 1001 quoted above. We are, therefore, of the opinion

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that the Governor and Council may address their warrant relative to conditional pardon to a sheriff and that the sheriff may be made responsible for the supervision of a person conditionally pardoned pursuant to such warrant. We find no authority for the Governor and Council directing such warrant to local or state police.

In answer to your second question, the legislature has created a state-wide system for the supervision of persons granted conditional liberty from the state penal and correctional institutions. The legislative framework for such system is found in 34 M.R.S.A. Chapter 121. Functioning within this system are field probation and parole officers under the direction of the Division of Probation and Parole. Giving common meaning to the word "proper," as we are required to do by 1 M.R.S.A. § 72, sub-§ 3, we are of the opinion that field probation and parole officers are "proper officers" within the contemplation of 15 M.R.S.A. § 2163, such officers being the only officers in the state having full-time responsibility for the supervision of persons conditionally released from incarceration. The answer to your question 2 is thus affirmative--the Governor and Council may utilize the services of the Division of Probation and Parole for supervision under a warrant issued pursuant to 15 M.R.S.A. § 2163.

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Courtland D. Perry  
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