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ATTORNEY GENERAL OPINION NO. 91-8

TO: Olivia Craven West  
Executive Director  
Commission for Pardons and Parole  
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STATEHOUSE MAIL

Per Request for Attorney General's Opinion

QUESTION PRESENTED:

May a person be "eligible" for parole on a certain date (the first day of the indeterminate portion of the sentence), while at the same time not being capable of being released on parole because the board did not have the power to "consider" him for parole prior to the same date?

CONCLUSION:

The Commission for Pardons and Parole may schedule an initial parole hearing prior to the expiration of an inmate's determinate sentence so that the inmate may be paroled on the date he becomes eligible for parole.

ANALYSIS:

The relevant statute, Idaho Code § 19-2513, the Unified Sentencing Act, reads, in pertinent part:

During the minimum term of confinement, the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct except for meritorious service. The offender may be considered for parole or discharge at any time during the indeterminate period of the sentence.

Statutes must be liberally construed with a view toward accomplishing their aims and purposes and attaining substantial justice. Courts are not usually limited to the mere letter of the law, but may look behind the letter to determine the purpose and effect of the law, the object being to determine what the legislature intended and to give effect to that intent. Kennan v. Price, 68 Idaho 423, 195 P.2d 662 (1948); Chinchurreta v. Evergreen Management, Inc., 117 Idaho 588, 790 P.2d 369 (Ct. App. 1989), rev. denied 1989. Given this principle, it is my opinion that the legislature did not intend to make a person eligible for parole while at the same time denying that person parole status by denying the Commission for Pardons and Parole the opportunity to examine the person prior to the expiration of his determinate sentence. Not only would such an interpretation be in conflict with the very concept of being "parole eligible," it would have the undesirable effect of tacking on an additional month or two to the date of the fixed portion of the sentence. This clearly is not in keeping with the notion of a fixed minimum sentence and the policy of avoiding overcrowding in the penitentiary.

Therefore, it is my opinion that the Commission may examine a prisoner by scheduling an initial parole hearing prior to the expiration of the determinate sentence, so that the person may indeed be paroled when he becomes eligible for parole.

AUTHORITIES CONSIDERED:

1. Statutes

Idaho Code § 19-2513.

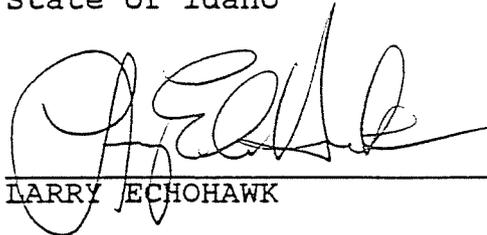
2. Cases

Chinchurreta v. Evergreen Management, Inc., 117 Idaho 588, 790 P.2d 369 (Ct. App. 1989), rev. denied 1989.

Kennan v. Price, 68 Idaho 423, 195 P.2d 662 (1948).

Dated this 20th day of September, 1991.

LARRY ECHOHAWK  
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Analysis by:

MICHAEL KANE  
Deputy Attorney General