Opinion No. 25

STATE PRISON: Prisoners; right to contact attorney—STATE PRISON: Warden, powers; prison library—Sections 80-702, 80-737 and and 93-2117, Revised Codes of Montana, 1947.

Held: 1. The warden of the state prison need not accept any legal materials sent to the prison for use in the library which he has not so ordered or requested.

2. A convict has the right to contact any attorney of his choice, or any bona fide corporation or association organized for the purpose of providing legal counsel for impecunious individuals.

September 29, 1961

Mr. Floyd E. Powell, Warden
Montana State Prison
Deer Lodge, Montana

Dear Warden Powell:

You have requested my opinion on the following questions:

(1) Whether or not legal materials sent to the prison for the use of the inmates need be accepted and placed in the prison library; and

(2) Whether a prisoner may correspond with an attorney of his choice, or with a bona fide corporation or association organized for the purpose of employing counsel on the prisoner's behalf.

The case of State Ex rel Middleton v. District Court, 85 Mont. 215, 278 Pac. 122 (1929), established the foundation upon which the answer to both questions must rest. At Page 221 of the Montana Reports, it is said:

> "The state prison is under the supervision of the State Board of Prison Commissioners, . . . which board promulgates 'rules, regulations and by-laws' regulating intercourse between visitors and inmates. (Secs. 12-435 and 12-453, Rev. Codes 1921; [now Sections 80-702 and 80-737, RCM, 1947]) . . . The warden is required to enforce these regulations."

Continuing at Page 222:

> ". . . The constitutional right of an accused will, in the interest of justice, always be scrupulously guarded and protected, but, when the accusation ripens into a judgment of conviction, and that judgment becomes final, the prisoner becomes a ward of the state, incarcerated to expiate his crime; he no longer possesses such constitutional rights, and is subject to **all reasonable rules and regulations** of the institution in which he is confined, framed for his safekeeping and the protection of society." (Emphasis added.)

In the recent case of Hatfield v. Bailleaux, 290 F 2d 632, 9th Circuit, (1961), at Page 640, it is held that:

> ". . . State authorities have no obligation under the federal Constitution to provide library facilities and an opportunity for their use to enable an inmate to search for legal loopholes in the judgment and sentence under which he is held, or to perform services which only a lawyer is trained to perform . . . If an inmate believes he has a meritorious reason for attacking his, (judgment) he must be given an opportunity to do so. But he has no due process right to spend his prison time or utilize prison facilities in an effort to discover a ground for overturning a presumptively valid judgment.
>
> "Inmates have the constitutional right to waive counsel and act as their own lawyers, but this does not mean that a non-lawyer must be given an opportunity to acquire a legal education."

It is therefore my opinion that the warden need not accept legal materials sent to the prison, which were not requested by him.

As to the second question presented, it ties in with the first, in so far as it regards the rights of the convicts, under the rules and regulations promulgated by the commissioners to be enforced by the warden.

In the Middleton case, supra, the right of a convict to have a consultation "alone and in private" with his attorney, as provided in Section 93-2117, RCM, 1947, was held to include and apply to inmates of the state prison. At Page 223 of the Middleton case the court said: ". . . to permit any attorney such person desires to consult. . ." Since the Middleton case would allow an attorney and inmate to discuss the matter "alone and in private" upon the attorney's arrival at the prison, it necessarily pre-supposes contact of this particular attorney by the convict. Since the convict has a statutory right to face consultation with "any attorney", it follows that to refuse to allow him to initially contact an attorney is tantamount to denial of a statutory right.

Likewise, there are organizations dedicated to the protection and preservation of civil rights. Such organizations sometimes have corresponding attorneys throughout the United States, or if they do not have such attorneys they will contact a local attorney to represent any individual who has been able to indicate the existence of a meritorious claim. The local attorney then contacts the prisoner, and on behalf of the association commences his investigation to determine if the convict's civil rights have been violated. It is merely an indirect route for a convict to contact an attorney and must be categorized with the direct contact of an attorney by the convict, which heretofore has always been permitted.

It should not be understood, however, to mean that this opinion in any way alters, amends or supersedes any of the rules and regulations relating to the receiving and sending of mail by a convict. For as was stated in the case of Laughlin v. Cummings, 105 F. 2d 71, (1939), at Page 73:

> "While the opportunity to consult counsel must be preserved, it is clear that an inmate of a penal institution is not to be allowed untrammelled intrecourse with the world outside. . ."

It is therefore my opinion that a convict, so long as he complies with the prison rules and regulations thereto pertinent, has the right to contact any attorney of his choice, or any bona fide corporation or association organized for the purpose of providing legal counsel for impecunious individuals.

Very truly yours,
FORREST H. ANDERSON
Attorney General