

**Opinion No. 313.****Crime and Criminal Procedure—Governor—Reprieve, Additional.**

**HELD:** The Governor has authority to grant an additional reprieve, under the circumstances of the case presented, in order to permit him to investigate further into the facts and law of the case.

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July 2, 1936.

Hon. Elmer Holt  
Governor of Montana  
The Capitol

You inquire as to your right to grant an additional reprieve in order to permit you to investigate further as to the facts and the law in the case of William Clarence Cates.

William Clarence Cates was convicted of the crime of murder in the first degree in the District Court of Missoula County, and was sentenced

to be hanged. The conviction was sustained by the Supreme Court of the State of Montana, 97 Mont. 173. Governor Frank H. Cooney granted commutation of such sentence from death to life imprisonment, which commutation was not approved by a majority of the Board of Pardons and was not effective thereafter. Governor Cooney granted several reprieves, the last of which being until July 7, 1936. You inquire as to the right of the Governor to grant more than one reprieve, and, in particular, your right to grant an additional reprieve for such time as will permit you to fully investigate such case.

The rights of the Governor of the State and the State Pardon Board are fixed by the Constitution of the State of Montana as follows: "The governor shall have the power to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutation of punishments and respites after conviction and judgment for any offenses committed against the criminal laws of the State; provided, however, that before granting pardons, remitting fines and forfeitures, or commuting punishments, the action of the governor concerning the same shall be approved by a board, or a majority thereof, composed of the Secretary of State, Attorney General and State Auditor, who shall be known as the Board of Pardons. The legislative assembly shall by law prescribe the sessions of said board, and regulate the proceedings thereof. But no fine or forfeiture shall be remitted, and no commutation or pardon granted, except upon the approval of a majority of said board after a full hearing in open session and until notice of the time and place of such hearing, and of the relief sought, shall have been given by publication in some newspaper of general circulation in the county the crime was committed, at least once a week for two weeks. \* \* \*" (Article VII, §9.)

It is to be noted that this section provides that the power of the Governor to grant pardons, absolute or conditional, and to remit fines and forfeitures, and to grant commutations of punishments, and that before such granting, same must be approved by a majority of the State

Board of Pardons consisting of the Secretary of State, Attorney General and State Auditor.

The power to grant respites after conviction and judgment is also granted to the Governor, and no limitation that same must be approved by the State Board of Pardons is found within the Constitution. This limitation appears to have been designedly omitted so that the Governor might grant respites, or reprieves, without securing the approval of the Board of Pardons. The constitutional provision hereinbefore quoted was substantially enacted into a law passed by the state legislature and is found in Section 12247, R. C. M. 1935. Section 12262, R. C. M. 1935, further provides: "The governor has the power to grant respites after conviction and judgment, for any offense committed against the criminal laws of the state, for such time as he thinks proper."

The particular question submitted by you has never been passed upon by the Supreme Court of this state. An investigation of the constitutions and supreme court decisions of other states shows that the power to grant pardons and respites is granted to governors, boards and other officers in different language and under different conditions. So far as we were able to discover, no other state had a constitutional provision upon this question identical with that of the State of Montana. The powers and rights of a governor, under somewhat similar constitutions, are cited in *Corpus Juris*.

"There is no limit to the period to which a reprieve may be granted in the absence of any limitation imposed by law. A constitutional provision prohibiting a governor from granting a reprieve for more than a certain period of time prevents the governor from granting a single reprieve for a greater period of time, but does not prevent him from granting successive reprieves which in the aggregate exceed that period of time; \* \* \*." (46 C. J. 1196).

The text is upheld by the cases cited: *State v. Harrison*, 115 S. E. 746; *Gore v. Humphries*, 135 S. E. 481; *In re Advisory Op. to Governor*, 62 Fla. 7, 55 So. 865; *Simmons v. Fenton*, 205 N. W. 296.

While these opinions interpret constitutions somewhat different than that of Montana, they do hold that a governor is not restricted to granting only one reprieve, and that a legislature may not limit the power of a governor to grant reprieves as fixed by the constitution of the state.

Therefore, it is held that under the circumstances in this case you have the authority to grant an additional reprieve in this case.