

Opinion No. 352.**Pardons and Paroles — Governor,
Power to Recommend Conditional
Pardon—State Board of Pardons.**

HELD: The Governor has power to recommend to the State Board of Pardons a conditional pardon so long as the conditions are not illegal, immoral or impossible of performance.

September 16, 1936.

Hon. Elmer Holt
Governor of Montana
The Capitol

You inquire as to your authority to recommend to the State Board of Pardons a conditional pardon.

You are authorized to do this under the Constitution and statute of the State of Montana. Both the Constitution and statute provide: "The governor shall have power to grant pardons, absolute or conditional, * * *: provided, however, that before granting pardons, * * * 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." Constitution, Article VII, Section 9; Section 12247, R. C. M. 1935.

This statute and constitutional provision have been interpreted in the case of *In re Sutton*, 50 Mont. 88. Such decision reads in part as follows: "Under the Constitution and the statute, the governor is author-

ized to impose conditions without restriction, so long as they are not illegal, immoral or impossible of performance."

In the case cited, Governor S. V. Stewart granted a conditional pardon, which was set out in full in said case (p. 30). This pardon contained conditions similar to those which you desire to recommend. The pardon and conditions in that case were held valid and binding upon the prisoner.