

Opinion No. 144

**Montana State Industrial School, expense of inmates—Parole, from Montana State Industrial School.**

Held: A county is liable for the expense of each boy committed to the Montana State Industrial School at the rate of thirty-five cents a day and the fact that the boy is on parole does not relieve the county from such liability and this liability applies to boys committed to and in such school on July 1, 1943, the effective date of Chapter 156, Laws of 1943, and boys that are hereafter paroled.

December 21, 1943.

Mr. C. M. Horn, President  
Montana State Industrial School  
Miles City, Montana

Dear Mr. Horn:

You have requested my opinion concerning the expenses to be charged to

the counties for inmates of the Montana State Industrial School. You have also submitted for my opinion a question concerning the eligibility for parole of boys in the school.

On October 11, 1943, this office rendered its official Opinion No. 144, Volume 20, Report and Official Opinions of the Attorney General, which is hereby withdrawn and this opinion is substituted therefor.

Section 12504, Revised Codes of Montana, 1935, as amended by Chapter 156, Laws of 1943, is pertinent in regard to expenses. This section provides in part:

"The county from which any boy committed to such school shall be sent shall be liable for the expense attending the care, education, training and safekeeping of such boy until he shall have been finally discharged by the executive board of said school, and shall pay for the same thirty-five cents (35c) per day until his final discharge.

"That the provisions of this Section requiring payment to be made by counties for care, education, training and safekeeping shall apply to all boys committed to and in such school on the date this act takes effect."

It is noted from the foregoing quotation that it is the final discharge of the boy that relieves the county from the expense of thirty-five cents a day for each boy "committed to and in such school." The fact that a boy is paroled does not mean that he is finally discharged from the school. This is recognized in Section 12508, Revised Codes of Montana, 1935, as amended by Chapter 156, Laws of 1943, which provides in part:

"It shall be the duty of the president to recall and return to the school any boy who may not be conducting himself properly, or who may not have a suitable home, and for such purpose such industrial school shall have sole custody and control over any boy so paroled until he shall have reached the age of twenty-one (21) years, or until he shall be finally discharged."

It is therefore my opinion that a county is liable for the expense of each boy committed to the Montana State

Industrial School at the rate of thirty-five cents a day and the fact that the boy is on parole does not relieve the county from such liability and this liability applies to boys committed to and in such school on July 1, 1943, the effective date of Chapter 156, Laws of 1943, and boys that are thereafter paroled.

In answering your second question, it is necessary to consider the provisions of Section 12508, Revised Codes of Montana, 1935, as amended by Chapter 156, Laws of 1943, which provides in part:

"The Executive Board, on recommendation of the president of the school may, at any time after a boy has been in the industrial school for a period of three (3) months release such boy on trial or parole."

The power to grant a parole and statutes providing for a parole will be construed most beneficially to the person seeking the parole. (39 Am. Jur-567.)

The application of this rule to Section 12508, Revised Codes of Montana, 1935, as amended by Chapter 156, Laws of 1943, would permit the executive board on recommendation of the president of the school to parole a boy who was committed on April 1st, 1943, or any prior date, as the effective date of Chapter 156, Laws of 1943, was July 1, 1943.

It is therefore my opinion that Section 12508, Revised Codes of Montana, 1935, as amended by Chapter 156, Laws of 1943, has a retroactive effect and any boy committed on April 1st, 1943, or any prior date, is eligible for parole.

Sincerely yours,  
R. V. BOTTOMLY  
Attorney General