

Opinion No. 102.

Montana State Industrial School—Reformatory Officers—Custody and Control—Discharge—Parole

HELD: The President of Montana State Industrial School is without power to assign the custody or control of a boy under his jurisdiction to the armed forces.

November 23, 1954.

Mr. Casper Wolhowe, Superintendent
Montana State Industrial School
Miles City, Montana

Dear Mr. Wolhowe:

You have inquired of this office as to whether the President of Montana State Industrial School has the power to consent to the enlistment of young men of seventeen years into the armed forces.

Reformatory officers have only such powers as are expressly or impliedly conferred by law. (76 C.J.S. Reformatories, § 8.) Chapter 235, Laws of 1953, in delegating power to the President provides:

“The president shall have entire supervision of the school, subject, however, to the control of the state board of education, and shall hold his office during the pleasure of said state board of education.”

Since it is not evident that this broad grant of power carries with it the power to consent to service enlistments, it becomes necessary to look to the circumstances under which a boy may be released from the institution.

Section 80-818, R.C.M., 1947, providing for the duration of custody reads:

“Duration Of Custody. Each boy committed to the state industrial school shall remain there until he arrives at the age of twenty-one (21) years, unless paroled or legally discharged; provided that it shall be lawful for the executive board upon the recommendation of the president of said school to discharge therefrom any boy who has arrived at the age

of eighteen (18) years, if it be made to appear while there as an inmate he deported and conducted himself in such a manner as to make it reasonably probable that he has reformed and is a proper person to be discharged."

The President's sole power with regard to the release of boys is one of recommendation only. Section 80-820, R.C.M., 1947, embodying such power provides:

"Releases On Parole. The executive board, on recommendation of the president of the school may release a boy on trial or parole, but in all cases where a boy is released on trial or parole, he must, at stated intervals, report his conduct to the president and present certificates of good behavior, whereupon his leave or parole may be extended, or the executive board, by a unanimous vote, may grant him a full and unconditional discharge and order him finally released from the custody and control of such school. 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."

Control and custody of boys committed to the Industrial School is properly in the hands and judgment of the President. Such control is exercised even after a boy is released on trial or parole until such boy reaches the age of twenty-one (21). The only exception is provided in Section 80-820, supra, whereupon the executive board may by unanimous vote grant a full and unconditional discharge. Unless such unconditional discharge is granted, the law requires that a boy released on trial or parole be subject to recall and return to the school.

It is, therefore, my opinion that the President of Montana State Industrial School is without power, in the absence of a court order, to assign the custody or control of a boy under his jurisdiction to the armed forces.