OFFICIAL OPINION NO. 55

June 25, 1951.

Hon. Alfred F. Dowd,
Warden,
Indiana State Prison,
P. O. Box 41,
Michigan City, Indiana.

Dear Warden Dowd:

Your letter of May 28, 1951, requests an official opinion on the following question:

> "How may the Board of Trustees of the Indiana State Prison release men to wanting authorities without losing jurisdiction over these men until such time as the Board of Trustees feel such an inmate of the Prison is entitled to his final release; and asking what procedure may be followed in an effort to exercising continuing authority over a parolee who so obtains his release through a warrant issued by the proper authorities of another state and in convicted and sentenced to a new term in that state."

Burns Indiana Statutes, 1942 Replacement, Section 13-245 (Acts 1907, Ch. 98, Sec. 3), defines the Board of Parolees of the Indiana State Prison to be the Board of Trustees of the Prison; and further provides that prisoners confined upon indefinite sentences whose minimum term of sentence has expired shall be given the opportunity to appear before such Board and apply for release upon parole.

Section 13-248 (Acts 1897, Ch. 143, Sec. 5), authorizes the Board to release such prisoners upon parole upon such terms and conditions as the Board shall prescribe, but to remain in the legal custody and under the control of the Warden until the expiration of the maximum term specified in his sentence.

Section 13-249, (Acts 1897, Ch. 143, Sec. 3), provided for the retaking of parolees for certain reasons.

Section 9-3001 (1), (Acts 1935, Ch. 289, Sec. 1), authorizes the Board to grant out-of-state paroles.

Generally, a parole agreement is considered to be contract between a prisoner and the State and may be made subject

to certain conditions imposed at the time of the granting of the parole. Where conditions have been imposed, the prisoner is bound by these conditions. While on parole, a parolee is viewed as being in the legal custody of and is constructively a prisoner of the State granting the parole.

Woodward v. Murdock (1890), 124 Ind. 439, 444; 24 N. E. 1047;
People v. Nowak (1944), 387 Ill. 11; 55 N. E. 2d 63, 153 A. L. R. 1101;
Commonwealth *ex rel.* Banks v. Cain (1942), — Pa. —, 28 Atl. 2d 897, 143 A. L. R. 1173;
67 C. J. S. 610, "Pardons" Sec. 22(a) (b).

Although the purpose of a system of parole is to allow rehabilitation of criminals under supervision, the public interest of the State motivates such rehabilitation. The public interest demands controlled supervision for so long as the paroling authorities think necessary.

Since a parole to another state is for the purpose of allowing the service of a sentence in such other state concurrently with the receiving of the Indiana sentence, I feel that such a practice will encourage development and good behavior on the part of such a parolee to earn a shortened total period of confinement. An examination of the position taken by this office in March, 1944, shows that it is not in conflict with the views expressed herein.

On the subject of the question of your letter, there is a conflict of authority as to whether jurisdiction of a State over a prisoner by surrender of physical custody of the prisoner, is surrendered to another demanding jurisdiction where no parole is granted. Cases holding jurisdiction to be surrendered in such cases are:

People *ex rel.* Barrett v. Bartley (1943), 383 Ill. 437; 50 N. E. 2d 517; 147 A. L. R. 935;
Ex parte Guy (1928), 41 Okla. Crim. Rep. 1, 269 Pac. 782;

Cases holding jurisdiction not surrendered are:

Bartlett v. Lowry (1935), 181 Ga. 526; 182 S. E. 850;
Commonwealth *ex rel.* Kamons v. Ashe (1934), 114 Pa. Super. 119, 173 Atl. 715.

There is no conflict in authority, however, in those cases where a proper parole has been granted, and during the term of such parole where physical custody of a parolee is surrendered to a demanding jurisdiction to stand trial and serve a sentence upon a criminal charge in such other jurisdiction. In such a case there is no waiver of jurisdiction by the state originally paroling such prisoner.

U. S. *ex rel.* Hunke v. Regan (C. C. A. 7th, 1947), 158 R. 2d 644;

People *ex rel.* Pepe v. Ashworth (1941), — Misc. —, 31 N. Y. S. 2d 225;

Bartlett v. Lowry (1935), 181 Ga. 526; 182 S. E. 250;

People *ex rel.* Barrett v. Bartley (1943), 383 Ill. 437; 50 N. E. 2d 517; 147 A. L. R. 935.

In order for the State of Indiana to insure that there is no waiver of jurisdiction in a case where an inmate of the Indiana State Prison is surrendered to the authorities of another demanding jurisdiction in order that such inmate may stand trial and be confined in such demanding jurisdiction, it is suggested that a prisoner so released be given a properly executed out-of-state temporary parole; and that there be attached, as a part of the agreement, a condition that the jurisdiction of Indiana is not waived, and that the State may retake such prisoner upon surrender by such other jurisdiction, within the terms and conditions of the general law of Indiana pertaining to the parole of out-of-state prisoners.

Such temporary parole differs from the usual out-of-state parole, in that it is not based on a decision of the Parole Board that the inmate is ready to associate with the public at large under parole supervision for the purpose of his further rehabilitation. Rather, such a parole is based on the theory that it is to the best interest of the inmate not to have a charge pending from another jurisdiction against him, if at some later date he is determined to be sufficiently rehabilitated to warrant his conditional release under general parole supervision. In other words, such a conditional temporary parole by the State of Indiana may result in the concurrent discharge of two sentences.