

## OFFICIAL OPINION NO. 7

January 30, 1946.

Mr. Russell M. Blande, Chief Clerk,  
Indiana State Prison,  
Michigan City, Indiana.

Dear Mr. Blande:

I have your letter of December 6, 1945 in which you request my opinion on the following question:

“Has the original act which lodged the power of parole and supervision of a parolee been repealed and superseded by the Public Welfare Act under which the Department of Public Welfare now supervises the Parolee?”

The Board of Parole of the Indiana State Prison is constituted as set forth in Section 3 of Chapter 98, page 138 of the Acts of 1907 (13-245 Burns' 1933 R. S.):

“The board of trustees of the Indiana State Prison shall be ex officio the board of parole for such prison.”

Its power to grant paroles is found in Section 5 of Chapter 143, page 219 of the Acts of 1897 (13-248 Burns' 1933 R. S.):

“If it shall appear to said board of commissioners of paroled prisoners, from a report by the warden of such prison, or upon an application by a convict for release on parole as hereinbefore provided, that there is reasonable probability that such applicant will live and remain at liberty without violating the law, then said board of commissioners may authorize the release of such applicant upon parole, and such applicant shall thereupon be allowed to go upon parole outside of said prison walls and inclosure, upon such terms and conditions as said board shall prescribe, but to remain while so on parole, in the legal custody and under the control of the agent and warden of the state prison from which he is so paroled until the expiration of the maximum term specified in his sen-

tence, as hereinbefore provided, or until his absolute discharge as hereinafter provided.”

Supervision of the parolees was provided by Sections 6 and 7 of the 1897 Act (13-249—13-254 Burns’ 1933 R.S.). They read as follows:

“If the agent and warden of the prison from which such prisoner was paroled, or said board or any member thereof, shall have reasonable cause to believe that the prisoner so on parole has violated his parole and has lapsed or is probably about to lapse into criminal ways or company, then such agent and warden or said board, or any member thereof, may issue his warrant for the retaking of such prisoner, at any time prior to the maximum period for which such prisoner might have been confined within the prison walls upon his sentence, which time shall be specified in such warrant.”

“The warden of each prison shall appoint an agent, whose duty it shall be to aid and secure proper employment for all prisoners who have so conducted themselves as to be entitled to go out from such prison on parole, and also for those who have become entitled to an absolute discharge before the maximum time for which they were sentenced, and to keep the said warden informed of the conduct of said prisoners when out upon parole, and to make a report as to each prisoner in such matters on the first day of each month for the preceding month.”

The Welfare Act of 1936 being Section 10 of Chapter 3, page 12, Acts of 1936 (Special Session), as amended by Section 5, Chapter 349, page 1677, (52-1109 Burns’ 1933 R. S. Supp.) of the Acts of 1945 now provides as to supervision of paroles:

“When the board of trustees of any of the penal or correctional institutions of this state shall have authorized the release of any inmate of such institution upon parole, as provided by law, the warden or superintendent of such institution shall transmit the certified copy of such order of release to the state

department. All prisoners so released on parole shall be under the supervision of the state department. All parole agents who are responsible for ascertaining and reporting on the conduct of paroled persons shall be appointed by the state department in the same manner as other employees, as herein provided, and the state department may delegate such duties to any of the employees of the county department."

Under those statutes, I am of the opinion that the power of the Board of Parole as to granting paroles remains unimpaired. This view is supported by an opinion of the Attorney General on a similar inquiry from the Indiana Women's Prison on September 29, 1941 (1941 O.A.G. 334). At that time, however, the Welfare Act of 1936, prior to the 1945 amendment, gave the Welfare Department the final word before release upon parole. The 1945 amendment removed from the Welfare Department any power over the release.

However, under the last Act as amended, supervision of parolees is solely within the jurisdiction of the Welfare Department. It is noted that Section 10 of the 1936 Welfare Act as amended provides that *all* parole agents shall be appointed by the state department.

I am therefore of the opinion that there is no authority for either the Warden or the Board of Trustees of the State Prison to appoint parole agents, and that the powers of the Board of Parole of the State Prison with respect to supervision have been transferred to the Welfare Department.

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OFFICIAL OPINION NO. 8

January 30, 1946.

Hon. Clement T. Malan,  
State Superintendent of Public Instruction,  
State House,  
Indianapolis, Indiana.

Dear Doctor Malan:

Your letter of January 14, 1946, received requesting an official opinion on the following questions which have been