

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 93-F-08

Date issued: June 25, 1993
Requested by: Warren R. Emmer, Director
Division of Parole & Probation

- QUESTIONS PRESENTED -

I.

Whether a pardon may be rescinded.

II.

Whether the Board of Pardons may rescind a reduction or modification of punishment given by an earlier board.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that the Board of Pardons may rescind a pardon only until the convict has been released and finally discharged from the penitentiary.

II.

It is my further opinion that the Board of Pardons may not rescind a reduction or modification of punishment given by an earlier board.

- ANALYSES -

I.

North Dakota Constitution Article V, Section 6 establishes the Board of Pardons and authorizes it "to remit fines and forfeitures, to grant reprieves, commutations, and pardons after conviction for all offenses except treason and cases of impeachment." The Legislative Assembly is granted the authority to regulate the manner in which the Pardon Board's work is accomplished. N.D. Const. Art. V, ? 6. N.D.C.C. ch. 12-55 sets forth the manner in which the Pardon Board may exercise its authority. N.D.C.C. ? 12-55-05.

N.D.C.C. ? 12-55-12 authorizes the Board of Pardons to grant an absolute or a conditional pardon. A conditional pardon

imposes a condition of which performance is necessary to the validity of the pardon. A conditional pardon may not become operative until the person receiving the conditional pardon has performed some specific act. A conditional pardon may also become void if a specific event occurs. BLACK'S LAW DICTIONARY 1113 (6th ed. 1990).

N.D.C.C. ? 12-55-22 provides:

Board may reconsider action. The board of pardons may reconsider its action in granting a pardon to any convict at any time before such convict has been released and finally discharged from the penitentiary. Such action may be taken on the board's own motion or on the petition of interested parties.

Pursuant to N.D.C.C. ? 12-55-22, the Board of Pardons may reconsider and rescind the granting of either an absolute or a conditional pardon, only until such time as the convict has been released and finally discharged from the penitentiary. After the convict has been released and finally discharged from the penitentiary, the Board of Pardons is not authorized to reconsider or rescind its initial action in granting the pardon.

However, if a convict is released from the penitentiary and is granted a pardon upon a condition which the convict must meet after that convict's release, the question arises whether N.D.C.C. ? 12-55-22 would prohibit the Board of Pardons from determining that the pardon should be revoked or rescinded if the convict fails to meet the conditions imposed by the pardon after the convict's release.

Without the power to revoke a conditional pardon upon the violation of the conditions, the Board of Pardon's placing conditions on a pardon would be meaningless. It is presumed that the entire statute is intended to be effective and a just and reasonable result feasible of execution is intended in the enacting of a statute. N.D.C.C. ? 1-02-38.

To give effect to N.D.C.C. ? 12-55-12 authorizing the grant of conditional pardons and to achieve a just and reasonable result, N.D.C.C. ? 12-55-22 may not be interpreted to prohibit revocation of conditional pardons upon violation of the conditions. In my opinion, N.D.C.C. ? 12-55-22 does not prohibit the revoking or rescinding of a conditional pardon upon the failure of a convict to meet the conditions imposed

ATTORNEY GENERAL'S OPINION 93-08
June 25, 1993

by that pardon even if the convict has been released from the penitentiary since the pardon did not become final and no final discharge from the penitentiary occurred. Such action would not be a reconsideration of the grant of the pardon, but rather the necessary consequence of a failure to comply with the conditions.

II.

N.D.C.C. ? 12-55-22 limits the Board of Pardons' authority to reconsider its actions to pardons. The terms pardon, reprieve, and commutation have distinct definitions and have specific references in N.D.C.C. ch. 12-55 and Article V, Section 6 of the North Dakota Constitution.

Differences exist between reprieves, commutations, and pardons. N.D.C.C. ? 12-55-11.1 defines a "commutation" as "the change of the punishment to which a person is sentenced to a less severe punishment." Although the term "reprieve" is not defined in N.D.C.C. ch. 12-55, this term involves a postponement of punishment or execution of sentence for a period of time and therefore "differs from a commutation which is a reduction of a sentence and from a pardon which is a permanent cancellation of a sentence." BLACK'S LAW DICTIONARY, 1302 (6th ed. 1990). See also The American Heritage Dictionary, 1049 (2nd College Ed. 1991).

In contrast to a reprieve or a commutation, a "pardon" releases the offender from the entire punishment prescribed for the offense. BLACK'S LAW DICTIONARY, 1113 (6th ed. 1990). See also, 1985 N.D. Op. Att'y Gen. 158 and 1988 N.D. Op. Att'y Gen. 65.

Had the North Dakota Legislature intended the Board of Pardons to have authority to rescind reprieves or commutations of sentences, it could easily have provided this authority within N.D.C.C. ? 12-55-22 or in a separate statutory provision within N.D.C.C. ch. 12-55. Absent legislative change or an additional grant of authority, a Board of Pardons may not rescind a reduction or modification of punishment given by an earlier board. Because this opinion is based upon the lack of statutory authority to rescind a reduction or modification of punishment granted by the Pardon Board, it is not necessary to address any constitutional concerns such rescissions might raise.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ? 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
ATTORNEY GENERAL

ATTORNEY GENERAL'S OPINION 93-08
June 25, 1993

Assisted by: Robert P. Bennett
Assistant Attorney General

krb