



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

May 4, 1964

Honorable Jack Ross, Chairman  
Board of Pardons and Paroles  
John H. Reagan State Office  
Building  
Austin, Texas

Opinion No. C-252

Re: Whether the Board of  
Pardons and Paroles,  
under stated circum-  
stances, has the au-  
thority to terminate  
the period of parole  
supervision of desig-  
nated parolee.

Dear Sir:

By letter dated March 31, 1964, you have requested an opinion of this office as to whether the Board of Pardons and Paroles has the authority, under the circumstances stated below, to terminate the period of parole supervision of the designated parolee. In connection therewith you present the following circumstances:

1. Parolee was convicted on six pleas of guilty and was sentenced on June 28, 1960, to serve not less than two (2) nor more than twelve (12) years. He was received at the Texas Department of Corrections on July 25, 1960.
2. On March 19, 1963, parolee was released on parole to the supervision of the State of Louisiana, under the Interstate Parole Compact, (Article 781c, Code of Criminal Procedure). He is currently on parole in that state.
3. On March 11, 1964, the District Court in which he was convicted, on motion of the State of Texas, granted the State's motion for a new trial for the purpose of reducing the sentence originally imposed by the judgment of the court dated June 28, 1960. Upon a hearing in this motion the Court entered an order purporting to reduce the sentence from not less than two (2) nor more than twelve (12) years to a sentence of not more than two (2) years.

To commute punishment means to change it from that assessed against a convicted defendant into a less severe one. Gilderbloom v. State, 272 S.W.2d 106, (Tex.Crim. 1954). An order of a court reducing the punishment assessed in a final conviction is in violation of the Constitution, which vests the power to grant reprieves and commutations of punishment

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and pardons in the Governor, on recommendation of the Board of Pardons and Paroles. Constitution of Texas, Article IV, Section 11; Ex parte Miers, 64 S.W. 2d 778 (Tex.Crim. 1933); Snodgrass v. State, 150 S.W. 162 (Tex.Crim. 1912); Gilderbloom v. State, supra. By virtue of the above authorities the attempt by the Court to commute the sentence is void.

SUMMARY

The action of the District Court in attempting to commute the sentence of the parolee is in violation of Article IV, Section 11 of the Texas Constitution. Therefore the Board of Pardons and Paroles under the stated circumstances, does not have the authority to terminate the period of parole supervision of designated parolee.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

BY:

  
Gilbert J. Pena  
Assistant Attorney General

GJP:cg:br

APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman  
Norman Suarez  
Bill Allen  
Jerry Brock  
Lloyd Martin

APPROVED FOR THE ATTORNEY GENERAL

BY: Stanton Stone