

From a reading of this section it is very clear that where a sheriff of the county also holds the office of jury commissioner, then immediately upon the expiration of his term of office as sheriff his office as jury commissioner becomes vacant.

Therefore, it is apparent that Sheriff Dewey's office as a jury commissioner became vacant on November 10, 1948, when his term as sheriff in and for the County of Passaic had terminated.

Answering your specific question posed in paragraph two of your letter as to whether or not Mr. Dewey should be appointed for an unexpired term, it is the opinion of this office that Sheriff Dewey should receive an appointment for an unexpired term as jury commissioner in and for the County of Passaic as provided for by R. S. 2:87-6 which reads as follows:

"If the office of a jury commissioner appointed pursuant to section 2:87-1 of this Title becomes vacant by reason of his removal pursuant to section 2:87-4 of this Title, or his death, resignation or removal from the county, or his disqualification by assuming the duties of another public office, or for any other reason, the Governor shall appoint his successor for the balance of the term. A certificate of the appointment to fill a vacancy shall be filed in the office of the clerk of the county in which the vacancy existed."

Respectfully submitted,

THEODORE D. PARSONS,
Attorney General,

By: BENJAMIN M. TAUB,
Deputy Attorney General.

bmt;d

MARCH 29, 1949.

HONORABLE SANFORD BATES, *Commissioner,*
Department of Institutions and Agencies,
State Office Building,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 19.

MY DEAR COMMISSIONER:

You indicated that there is some misunderstanding regarding the power of a sentencing court to open and vacate the sentence of a prisoner committed to and confined in the penal and correctional institutions under the jurisdiction of your department.

You desire to be advised concerning the procedure to be followed when your institutions receive an order of the court remanding the prisoner for resentence.

The Supreme Court has established a procedure governing the courts under its jurisdiction relative to correction of sentences and imposition of new sentences under Rule 2:7-13 of the Rules, which reads as follows:

"The court may correct an illegal sentence at any time. The court may reduce or change a sentence within 60 days from the date of the judgment of conviction."

Accordingly, when you receive an order from the committing court directing that a prisoner be produced before it at a specific time and place, you are required to comply with the provisions thereof, assuming of course, that you receive a copy of said order certified under the hand and seal of the clerk of the court as being a true copy of the original.

In the event that it appears that such order has been entered more than 60 days after date of judgment of conviction, it is my opinion, and I advise you that you should, nevertheless, comply with the order.

This for the reason that your department and the several institutions under your jurisdiction are part of the Executive Branch of the Government and your function in respect to prisoners committed to your care is administrative and in no sense judicial.

If the court is in error in bringing a prisoner before it or in subsequently ordering his release, the responsibility is solely that of the court and it is the better practice in all such cases to advise your institutional officials to comply with court orders as above set out.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: EUGENE T. URBANIAK,
Deputy Attorney General.

ETU:hp

MARCH 29, 1949.

HONORABLE SANFORD BATES, *Commissioner,*
Department of Institutions and Agencies,
State Office Building,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 20.

DEAR MR. BATES:

The Warden of the State Prison has inquired concerning the recent opinion of this office to the effect that he may censor incoming and outgoing mail of the inmates in his institution.

He asks whether the opinion negatives the provisions of Section 17, Chapter 84, P. L. 1948 of the new Parole Law, which specifically provides by legislative mandate that prisoners may send uncensored mail to the Parole Board.

Second, he asks to be advised, if the answer to the first question is in the affirmative, whether this also means that mail from the Parole Board to the prisoner shall be uncensored.

It is my opinion, and I advise you that the Legislature was clearly within its right in providing in Section 17, Chapter 84, P. L. 1948, that a prisoner could be privileged to send uncensored mail to the Parole Board. Our previous opinion had no application to this situation and, therefore, does not negative the statutory enactment above cited.