



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable H. E. Moore
Chief, Bureau of Records and Identification
Texas Prison System
Huntsville, Texas

Dear Sir:

Opinion No. 0-4305
Re: What commutation of time
is the prisoner Abraham Lois
McNutt entitled to under
stated facts?

In your letter of May 6, 1942, you state that
Abraham Lois McNutt was sent to prison on January 7, 1932,
for a term of 15 years.

The record in the Secretary of State's office
shows that McNutt was granted a reprieve on December 15, 1938,
which was extended from time to time. On June 29, 1939, he
was granted a conditional pardon "conditioned that he continue
to observe the conditions of his previous clemency; according
to his prison record he is to be discharged on October 18, 1941."
This pardon has not been by the Governor revoked.

You state that on March 9, 1941, McNutt was con-
victed of a crime and sentenced to four years imprisonment and
was under said sentence returned to the prison on April 5, 1941.

You ask what commutation of time McNutt is entitled
to under the opinion of the Court of Criminal Appeals in the
case of *Ex Parte Whiteside*, 150 S. W. (2d) 1022.

The opinion in the *Ex Parte Whiteside* case reveals
that Whiteside was out on a 60 day furlough at the time he com-
mitted his second offense. In the instant case McNutt was out
on a conditional pardon, which has not been revoked. The opinion
therefore in the Whiteside case does not in any way apply to the
facts in the McNutt case.

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Unless and until the Governor revokes the conditional pardon given McNutt in 1939, he cannot be forced to serve any additional time in the penitentiary under the sentence he received in 1932. The only right the authorities have to hold McNutt in prison is under the four year sentence he received in March, 1941.

You should therefore classify McNutt as a new prisoner received on April 5, 1941, to serve a four year sentence beginning with March 9, 1941, without any regard to the fact that he had been sentenced in 1932 for 15 years, and was in April, 1941, for said sentence out of prison on a conditional pardon.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Geo. W. Barcus*

Geo. W. Barcus
Assistant

GWB:AMM

APPROVED MAY 20, 1942

Gerardo Mann

ATTORNEY GENERAL OF TEXAS

