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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 12, 2001

Richard T. Dobeck, Jail Administrator
County of Greenville
20 McGee Street
Greenville, South Carolina 29601

Re: Your Letter of November 28, 2000
SC Code Ann. §§24-13-40 & 24-13-210

Dear Mr. Dobeck:

In your above letter, you request an opinion from this Office with reference to the application of S.C. Code Ann. §24-13-210 (Credit given convicts for good behavior) to the "computation of time served by prisoners" for pretrial detention pursuant to S.C. Code Ann. §24-13-40.

By way of background, you indicate that: "[w]e have been struggling to correctly interpret the law as it is written in Code of Laws of South Carolina §24-13-40 and §24-13-210. We are currently giving only day for day credit for pre-trial jail time. We only give good time on the days left after the date of imposition of the sentence." You further indicate that "§24-13-40 states 'In every case in computing time served by a prisoner, full credit against the sentence shall be given for time served prior to trial and sentencing.' Please help us by defining 'full credit.' Does this mean day for day credit or do we give good time credit for the days awaiting trial. Since §24-13-210 states good time is given 'beginning with the day on which the sentence commences to run,' we have been day for day credit for pre-trial jail time and good time on the days remaining after the sentence date."

When interpreting the meaning of a statute, a few basic principles must be observed. The primary goal is to ascertain the intent the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). The clear and unambiguous terms of a statute must be applied according to their literal meaning. State v. Blackmon, supra.

You have asked for a definition of "full credit" as used in S.C. Code Ann. §24-13-40. As no contrary definition of the term has been provided within the statute, the words should be given their plain and ordinary meaning in an attempt to ascertain the intent of the General Assembly. In a previous opinion addressing the scope of §24-13-40, this Office opined that "[t]his Section reflects

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the legislature's intent that pre-sentencing incarceration be taken into account so that a defendant spends no more time in jail than that prescribed by his sentence." Atty. Gen. Op. (Dated June 8, 1999). Given this setting, it is logical to deduce that "full credit" would mean all credit to which a prisoner is entitled by law. There is no constitutional right to good time credits. See Wolff v. McDonnell, 418 U.S. 539, 557, 94 S.Ct. 2963, 41 L.Ed.2d 935 (1974). Any right to good time credits arises out of and is controlled by state statute. See Wolff, 418 U.S. at 557. Accordingly, the question then becomes: "Is a prisoner entitled to good time credits for pretrial detention pursuant to S.C. Code Ann. §24-13-210?"

Section 24-13-210 is entitled "Credit given convicts for good behavior" and, relevant to county detention centers, §24-13-210(C) provides as follows:

> A prisoner convicted of an offense against this State and sentenced to a local correctional facility, or upon the public works of any county in this State, whose record of conduct shows that he has faithfully observed all the rules of the institution where he is confined, and has not been subjected to punishment for misbehavior, is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run, computed at the rate of one day for every two days served. When two or more consecutive sentences are to be served, the aggregate of the several sentences is the basis upon which good conduct credits must be computed.

The words used by the General Assembly, both in the title of the section and the body, seem to indicate that such "good time" credits are appropriately applied to those convicted and sentenced for an offense, not those awaiting trial for an offense. Certainly, the General Assembly did not specifically provide in §24-13-210 that good time credits be applicable to time served prior to trial and sentencing. Had the General Assembly intended that the good time credits be counted for pretrial service, they could have written such into the statute. See Dezurn v. Mathney (Unpublished Opinion)(1989 WL 14155 (Tenn.Crim.App.))(Court notes that the applicable Tennessee law "does not specifically provide for the awarding of sentence reduction credits for good behavior credits for presentence confinement. If the Tennessee General Assembly had intended to grant good behavior credits for time spent in jail prior to sentencing, the Legislature could have amended the statute...to provide for such credits"). In fact, §24-13-210 was "substantially revised" by Act No. 83 in 1995, without a mention by our General Assembly of credit for good behavior for pretrial confinement.

Moreover, §24-13-210(C) provides that a prisoner, "convicted...and...sentenced" who conducts himself appropriately "is entitled to a deduction from the term of his sentence beginning with the day on which the service of his sentence commences to run." As the Court of Appeals of Michigan stated: "it is axiomatic a sentence may not commence to run before it is imposed." People v. Ovalle, 222 Mich.App. 463, 564 N.W.2d 147 (1997). Without an indication otherwise, the phraseology above is consistent with your interpretation that "good time" credit is intended to be applied only after a person's sentence is imposed.

Other authority reviewing similar statutes with similar language has reached the same conclusion as you have. For example, the Louisiana Supreme Court in addressing that state's then existing "good time" credit laws held "[t]he key phrase is 'inmate in the custody of the Department of Corrections who has been convicted of a felony . . . .' Clearly, [the statute] does not allow good-time to be earned prior to conviction." Foster v. Louisiana Department of Corrections, 382 So.2d 986 (1980). Additionally, In 1964 this Office analyzed the scope of §55-8(1), Code of Laws of South Carolina (1962), the precursor of §24-13-210, which read as follows:

> Each prisoner convicted of an offense against this State and confined in the State Penitentiary or in a county jail or upon the public works of any county in this State for a definite term, whose record of conduct shows that he has faithfully observed all the rules of the institution wherein he is confined and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence, beginning with the day on which the service of his sentence commences to run...

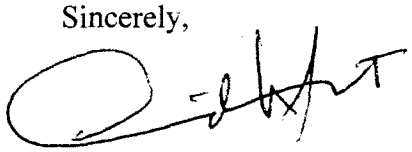
With reference to the above provision, this Office opined that "[t]he prisoner is not entitled to good behavior credit for the time served in jail prior to trial because he is not in custody serving a definite sentence until the judge orders a specific sentence to be served." See, OP. ATTY. GEN. dated September 11, 1964. While the language of the former §55-8(1) is not the exact match of §24-13-210, its phraseology is strikingly similar. Therefore, the cited opinion certainly provides support for your interpretation of §24-13-210 that "good time" credits are not to be applied to service of time prior to conviction and sentence.

Further, Courts have consistently recognized that state legislatures can legitimately distinguish between those persons confined awaiting trial or conviction and those confined as the result of a conviction and sentence for purposes of applying "good time" credits. See McGinnis v. Royster, 410 U.S. 263, 271, 93 S.Ct. 1055, 35 L.Ed.2d 282 (1974); Holmquist v. Manson, 168 Conn. 389, 362 A.2d 971 (1975); McNeil v. Commissioner of Correction, 417 Mass. 818, 633 N.E.2d 399 (1994); Foster v. Louisiana Department of Corrections, supra. Accordingly, such courts have found no constitutional violation in a state's denying "good time" credits to pre-trial detainees.

Based on the foregoing, it is my opinion that your interpretation of §§24-13-40 and 24-13-210 is reasonable. Given the language used in the statutes, the applicable tenets of statutory construction and the authority on the subject, I cannot say that it was the legislature's intent to provide that convicts receive "good time" credits for time spent confined prior to the imposition of their sentence. Further, as long as you are giving convicts actual credit for the time served pretrial towards the computation of their sentence, it would appear that you are complying with the general intent of §24-13-40 as expressed in our prior opinion of June 8, 1999 (it is the "legislature's intent that pre-sentencing incarceration be taken into account so that a defendant spends no more time in jail than that prescribed by his sentence").

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
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