

1978 S.C. Op. Atty. Gen. 172 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-136, 1978 WL 22604

Office of the Attorney General

State of South Carolina

Opinion No. 78-136

July 14, 1978

***1 SUBJECT: Corrections—General**

(1) [Section 24–13–210 of the Code of Laws of South Carolina \(1976\)](#) requires that good conduct computations be made on an on-going month-to-month basis.

(2) Absent a showing of criminal intent, the Department of Corrections' good faith in using the only feasible method available to them in computing the prisoners' good conduct reductions could be a defense to any action brought, including any action brought by a prisoner.

TO: William D. Leeke
Commissioner
South Carolina Department of Corrections

QUESTIONS:

1. Does [Section 24–13–210, Code of Laws of South Carolina](#), 1976, require that good conduct computations be made on an on-going month-to-month basis?
2. What is the potential liability of the Department of Corrections for computing the sentences incorrectly in the past?

STATUTES, CASES AND TREATISES:

[Code of Laws of South Carolina \(1976\)](#), [Section 24–13–210](#); [Ex parte Shores](#), 195 F. 627; [Polk v. Manning](#), 224 S.C. 467, 79 S.E. 875; [U. S. v. Rundle](#), 368 F.Supp. 1186 (E.D.Pa. 1973); [Whirl v. Kern](#), 407 F.2d 781 (5th Cir. 1969); 6A C.J.S., Arrests, Section 59; 67 C.J.S., Officers, Section 125; 72 C.J.S., Prisons, Section 21; 1972–73 Ops. Atty. Gen., No. 3600, p. 269; 1973–74 Ops. Atty. Gen., No. 3721, p. 78.

DISCUSSION:

You have requested an opinion from this Office concerning the Department of Corrections' computation of good conduct credits for inmates in the custody of the Department. [Section 24–13–210\(1\)](#) entitles an inmate to a reduction from the term of his sentence 'to be computed at the rate of fifteen days for each month served.' In the past, because of limitations on the staff at the Department to make manual computations and adjustments, the Department has, as a practical procedure, computed good conduct credit at the beginning of the term by projecting a reduction of one-third of the sentence. You advise that in the very near future the Department will expand its computer capability which will enable it to perform the on-going task of computing good conduct time and to adjust it on a month-to-month basis if required.

1. You inquire as to whether [Section 24–13–210](#) requires that good conduct computations be made on an on-going month-to-month basis? The effect of the language in the statute previously quoted is to require that the deductions be made for the time spent in actual incarceration with good behavior. A previous opinion of this office reached a similar conclusion. See 1973–1974 Ops. Atty. Gen. No. 3721, page 78. This is also the general rule.

Where the statute allows a specific credit for good behavior for each full or calendar month's service, the credits should be computed on the number of months' actual imprisonment with the requisite behavior. 72 C.J.S., Prisons, Section 21. (emphasis added).

It is therefore the conclusion of this Office that the statute anticipates that good conduct computations be made on a month-to-month basis since the computations must be made for time spent in actual incarceration.

*2 2. You inquire as to whether or not the Department has incurred any liability for computing the sentences incorrectly in the past? By this question I assume you are referring to any criminal liability on the part of the Commissioner or your subordinates because the prisoners have been released earlier than they would normally be entitled. By implication you are also inquiring as to whether or not those prisoners presently confined have any vested interest in the release date presently reflected in their records. A reduction of sentence for good behavior is a creature of statute, and the statute must be followed in determining how the deduction is to be computed. 72 C.J.S., Prisons, Section 21. At common law it was a misdemeanor for an individual having lawful charge of a prisoner to voluntarily or negligently permit him to depart from his custody however short the departure might be. Ex parte Shores, 195 F. 627; 1972-1973 Ops. Atty. Gen. No. 3600, page 269. It is clear that the Department has acted in good faith in attempting to carry out its responsibility to compute the release date of prisoners committed to its custody. Because of budgetary limitations, and the need to project release dates, the Department has in the past been unable to precisely compute the actual release date when taking into consideration good conduct credits which might be due the prisoner in accordance with statutory guidelines. The general rule, and the rule followed in this State, is that when a prisoner's sentence is ambiguous, vague or indefinite, the benefit of the doubt should be given to the prisoner. Polk v. Manning, 224 S.C. 467, 79 S.E.2d 875. For the Department to retain a prisoner past his release date might subject the custodians to liability. See Whirl v. Kern, 407 F.2d 781 (5th Cir. 1969). It is my understanding that the practice in the past has generally resulted in prisoners being released before the technical expiration date of their sentence after being afforded the benefits of the good conduct statute. In those cases where the errors in computation might have resulted in a prisoner being released after the expiration date, or in a case where an action is brought by a third party, it is generally held that public officers are not liable in private actions when they have acted in good faith. 67 C.J.S., Officers, Section 125.

'Good faith' . . . does not connote a subjective absence of malice or ill will . . . [I]t signifies instead a reasonable reliance on existing procedures and a reasonable belief in their validity at the time. U.S. v. Rundle, 368 F.Supp. 1186, 1190 (E.D.Pa. 1973).

Where a prisoner has been illegally discharged or released from prison, he may be rearrested to serve out his original sentence. A prisoner's custodian has no judicial authority or power to grant paroles or reprieves, and his act in releasing a prisoner prior to the expiration of his term is void. 6A, C.J.S., Arrests, Section 59. It follows therefore that a prisoner obtains no vested interest in an erroneously computed release date. The prisoner's sentence is determined by the Order of the Court, and his release date is computed by applying the statutory provisions for good conduct credit to the term of his sentence. Whenever an error is detected in the computation of the release date, it should be corrected. In the absence of any other feasible method of computation, the Department has used the best method available. There may, however, be serious question as to the Department's good faith in continuing computation of good conduct credits under an incorrect method when there is a feasible way to comply with the statute.

CONCLUSION:

*3 1. Section 24-13-210 of the Code of Laws of South Carolina (1976) requires that good conduct computations be made on an on-going month-to-month basis.

2. Although there may be a question concerning technical liability for releasing prisoners earlier than the actual expiration of their sentence in the past, absent a showing of criminal intent, the Department's good faith in using the only feasible method available to them could be a defense to any action brought, including any action brought by a prisoner. A prisoner has no vested interest in an erroneously computed release date and such error should be corrected as soon as it is called to the attention of the authorities.

Emmet H. Clair

Deputy Attorney General

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