

1973 S.C. Op. Atty. Gen. 24 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3453, 1973 WL 20917

Office of the Attorney General

State of South Carolina

Opinion No. 3453

January 15, 1973

***1 1. Minimum standards of due process must be met whenever the administrative or disciplinary action taken by penal authorities may result in a grievous or serious loss to the inmates of rights, liberties or opportunities. The revocation of good time is a substantial deprivation to an inmate and the administrative procedure involved must incorporate due process safeguards.**

2. The taking of good time on inmates transferred to the South Carolina Department of Corrections from County facilities should be effected only when a sufficient record exists that the described minimally acceptable procedures were followed within the county facilities involved or up in a processing of the matter through the Department's existing Disciplinary Procedure.

Director

South Carolina Department of Corrections

This office is in receipt of your letter of January 2, 1973, addressed to the Attorney General and he has referred the same to me for reply. You have posed the following questions:

1. What procedural due process is necessary at the county level to take statutory good time?
2. Can the Department of Corrections legally give credit to such a county's taking of good time without an investigation as to the amount of due process afforded that inmate?

As you may recall a similar question was posed with regard to the taking of good time from inmates within your Department. In response thereto, my letter of November 9, 1972, stated in part:

‘The concept ‘due process of law’ is not a fixed and inflexible rule of law, but rather a fluid notion of fundamental fairness which may vary with the times. As you are well aware, the past few years have evidenced a growing awareness and concern by our judicial system for the rights of those confined in public institutions.

While there has yet been no authoritative determination made by any state or federal court having jurisdiction over South Carolina relating to procedural due process as it relates to the administration of prison discipline, courts of other jurisdictions have found that minimum standards of due process must be met whenever the administrative or disciplinary action taken by penal authorities may result in a grievous or serious loss to the inmates of rights, liberties or opportunities. It would seem clear that the revocation of good time is a substantial deprivation to the inmate involved and that the administrative procedure involved must incorporate due process safeguards.’

Because of the existing state of the law within our jurisdiction, it is not possible to specify those procedural steps *which may subsequently be found necessary* in the taking of good time. Courts acting in this area have a tendency to judge due process matters on the facts before them rather than to establish firm guidelines or requirements. Therefore, any advice or suggestion by this office that certain procedural steps should be followed would necessarily be both speculative and prophylactic in nature.

*2 Nevertheless, because some guidance seems necessary to avoid or minimize future judicial confrontations and insure the rights of the confined, the following procedures are suggested for implementation within all county and state correctional facilities.

Whenever a prisoner 'commits any offense or violates any of the rules of the institution' (§ 55-8, S. C. Code) in which he is serving and by reason thereof the Director, county supervisor or official or board having charge of him deems it appropriate that all or part of his good conduct time should be forfeited, it must be insured:

1. that the prisoner be given reasonable notice of the charge against him sufficient to allow preparation of a defense or response;
2. that the charge involved constitutes an offense under the laws of the state or a violation of a *definite* and *previously promulgated* rule reasonably related to maintaining discipline, security or other legitimate state interest;
3. that the prisoner be brought before a person or persons *other than his accuser*, advised of the evidence against him, and allowed an opportunity to refute or otherwise respond thereto;
4. that only after a factual basis has been established by substantial evidence, should good time be taken;
5. that a report be made of such taking with the factual basis therefor clearly evident;
6. that the amount of punishment (i.e., the extent of good time forfeiture) be proportionate to the misconduct charged and established.

The foregoing administrative procedure should satisfy existing due process requirements and prevent claims that any taking of good time was arbitrary, capricious or the result of personal bias or prejudice. See *Sellers v. State of South Carolina*, — S. C. — (Opinion No. 19528, Dec'd. Dec. 5, 1972).

In answer to your second question please be advised that you as Director should effect the taking of good time on inmates transferred to you from county facilities *only* when a sufficient record exists that the above described minimally acceptable procedures were followed within the county facility involved *or* upon a processing of the matter through the Department's existing Disciplinary Procedure. See *Inmate Guide* (Rev. 1972), pp. 5-12.

John P. Wilson
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