PRISON, INDIANA STATE: Application of 1933 "Good Time" Act on determinate sentences begun prior to effective date.

December 21, 1933.

Mr. Howard C. Crosby,
Chief Clerk,
Indiana State Prison,
Michigan City, Indiana.

Dear Sir:

I have before me your letter of December 19, 1933, in which you ask my opinion regarding the following questions:

1. In the case of men previously sentenced, and confined at your institution at the time of passage of the "Good Time" Act of 1933, from what date is good time to be figured in arriving at the diminution of sentence to which they may be entitled under the 1933 Act, and are they entitled to any diminution for that part of a sentence served prior to the effective date of such Act?

2. Should diminution of sentence be allowed under the old "good time" law for sentences or portions of sentences served after the passage of the Indeterminate Sentence Act of 1897?

Section 1 of the 1933 Act referred to, reads in part as follows:

"Every inmate who is now or hereafter may be confined in the Indiana state prison, Indiana reformatory, or Indiana woman's prison, for a determinate term of imprisonment, and who, while an inmate in such institution, shall have no infractions of the rules and regulations of the institution, nor infractions of the laws of the State of Indiana or laws of the United States recorded against him or her, and who performs in a faithful manner the duties assigned to him or her while an inmate, shall be entitled to a diminution of time from his or her sentence as indicated in the following table for the respective years of his or her sentence, including time being served for unpaid fine or costs, and pro rata for any part of a year when the sentence is for more or less than a year."

Section 1, Chapter 164, Acts of 1933.
Section 3 of the Act provides:

"The warden or superintendents, in computing the diminution of time for those inmates now in the institutions mentioned in Section 1 of this Act, may allow them the good time granted for the years or year, or part of a year, of their unexpired sentence." (Our italics).

Section 3, Chapter 164, supra.

In my opinion, the language of the last mentioned section clearly shows that the legislature intended to allow diminution of time to prisoners already imprisoned on their unexpired sentences only.

Since the Act in question did not carry an emergency clause, it became effective upon the Governor's proclamation, which was issued at 10:00 o'clock a. m. on May 22, 1933. "Good time," as to prisoners already in your institution, should be computed on the basis of the balance of the determinate sentence unserved as of that date. They are not entitled to diminution of sentence for any portion of a sentence served prior to that date.

In answer to the second question, I would refer you to an opinion rendered by my predecessor in office to W. H. Daly, formerly warden of your institution, under date of February 28, 1929. (Opinions, Attorney General, 1929-30, p. 1019). The opinion therein stated is to the effect that the "Good Time" Act of 1883 was repealed by the Indeterminate Sentence Act, which was passed in 1897. The opinion is based on the case of McCoy v. Reid, 172 Ind. 182, at p. 193, which has not been overruled or modified. I concur in this opinion. The result is that there was no statute authorizing "good time" allowances from and after April 1, 1897, when the Indeterminate Sentence Act became effective, until May 22, 1933, effective date of the 1933 "Good Time" Act.