The language of the above statute, it seems to me, is clear. The italicized portion of the statute shows that the claim is not based upon the administration of a charity but the board is required to consider “the tribute of respect due to such soldier.” The Board, however, clearly is permitted to exercise discretion since the language fixing the amount of the allowance is “in a sum not exceeding seventy-five dollars.”

“GOOD TIME LAW”: Manner of computing allowance on unexpired terms of those incarcerated before law became ** Chapter 164, Acts 1933, construed.

December 18, 1936.

Hon. A. F. Miles,
General Superintendent,
Indiana Reformatory,
Pendleton, Indiana.

Dear Mr. Miles:

I have at hand your recent inquiry as to the proper method of computing diminution of time on the unexpired sentences of prisoners already confined in your institution when the 1933 “Good Time Law” became effective.

Section 1 of the so-called “Good Time” Act (Chapter 164, Acts 1933) says that the diminution of the sentence therein granted shall be “as indicated in the following table for the respective years of his or her sentence * * *.” (My italics.) The table referred to, which is set out in said Section, lists the diminution of time allowed for each consecutive year of the sentence, granting one month off for the “1st year,” two months for the “2nd year,” three months for the “3rd year,” four months for the “4th year,” and five months for each of the years from the “5th year” to the “21st year,” inclusive.

Section 3 of the Act provides as follows:

“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.”
The language of the Act is somewhat vague and uncertain as to whether, in computing good time on the respective unexpired terms of sentence of prisoners already confined when the Act became effective, the warden or superintendent should use as a basis the number of years of the entire sentence of the prisoner, or only the number of years of the unexpired sentence; or in other words, in the case of a prisoner who had served five years when the Act became effective, whether the warden or superintendent should credit him with one month of diminution of sentence for good behavior during the next ensuing year on the theory that such year is the "1st year" within the meaning of the table or whether he should credit him with five months of diminution on the theory that such next ensuing year is the "sixth year" within the meaning of such table.

In the portion of Section 1 quoted above, it seems pertinent that the legislature referred to the table as indicating the diminution of time to be granted "for the respective years of his or her sentence." (My italics). Likewise, the table listing the diminution of time to be allowed for each consecutive year sets out in the left-hand column, as the basis for the "good time" allowance, the "No. of Years of Sentence." (My italics). Consequently it would appear that the legislature had in mind the sentence in its entirety as the basis from which to compute the "good time" credit due in each particular case, unless Section 3, quoted above, can be said to indicate an intention to the contrary. The latter Section, in authorizing the warden or superintendent to allow prisoners already confined when the Act became effective "the good time granted for the years or year, or part of a year, of their unexpired sentence," in my opinion does not show any intent on the part of the legislature that the first year of imprisonment following the effective date of the Act should be considered as the "1st year" of "sentence" within the meaning of the table for purposes of computing the proper "good time" allowance for the balance of the unexpired sentence, although it does preclude the granting of diminution of sentence to such prisoners on those portions of their sentences which had been served prior to the effective date of the Act.

If any doubt should remain as to the proper interpretation of the Act, the purpose and spirit of the Act can and should
be resorted to in deciding this question. The purpose of the Act obviously was to encourage good behavior and discipline in the various penal institutions concerned, by offering a reward in the way of diminution of sentence. This purpose of the Act would be frustrated, at least in part, if prisoners confined at the time the Act became effective were not placed on an equal basis with prisoners thereafter incarcerated, with respect to the amount of diminution granted for each separate consecutive year of the original sentence. It seems reasonable to believe that such a situation would breed dissatisfaction, and would tend to discourage, rather than encourage, discipline and good behavior.

In my opinion, prisoners already in confinement when the "good time" law became effective, should be granted such diminution of time on their unexpired sentences as is provided in the table for the respective consecutive years or parts of years of their entire original sentences which they will be serving thereafter.

________________

AUDITOR OF STATE: Motor vehicle fuel—Sales and carriage of fuel from other states by motor carriers.

December 23, 1936.

Hon. Laurence F. Sullivan,
Auditor of State,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in response to your request for an opinion on certain provisions of the Motor Vehicle Fuel Tax Law. Your inquiry is as follows:

"W. H. Barber Company, 3650 S. Homan Avenue, Chicago, Ill., has been requested by this Department to become a bonded and licensed dealer of motor vehicle fuel in Indiana. The Barber Company is really a brokerage concern, buying motor fuel from The Globe Oil and Refining Company at Lamont, Illinois, and selling it to bonded and licensed dealers in Indiana. However, the contracts of such sales are consummated in the State of Illinois and the deliveries are then made by