

**PRISON, INDIANA STATE: Prisoners—good time—authority
of Warden to take away good time earned.**

November 19, 1937.

Hon. Louis E. Kunkel, Warden,
Indiana State Prison,
Michigan City, Indiana.

Dear Sir:

Acknowledgement is hereby made of your request for an opinion from this office upon the following state of facts:

“Inmate (Roy W. Davis, ISP No. 14642) was sentenced to this institution by the LaPorte County Circuit Court, May 19th, 1931, for a term of ten (10) years for the crime of ‘Robbery and Robbery While Armed.’

“While working on the ‘Benton Farm,’ January 27th, 1936, this man, together with another inmate, walked off the premises, stole a car and drove to Indiana Harbor, Indiana. They were missed at the regular daily count but voluntarily returned later the same day.

“Davis was brought up before the February meeting of the Board of Parole Revue for hearing relative to the above escape and set full time by them.

“The term ‘Set Full Time’ means all good time taken from a determinate sentenced man, in this case 3 years 1 month. We understand that this much cannot be taken from him as he had only earned 5 months 1 day good time at the date of escape. This, in our opinion, is all that can be taken from the prisoner.

“We are interested in your advice as to who has the jurisdiction of fining the inmate this 5 months, whether it be the Board of Parole, the Warden or the Deputy Warden.”

The questions presented by the above statement of facts involve a consideration of certain sections of Chap. 164 of the Acts of 1933, known as the “Good Time Law.” Sec. 1, Chap. 164 of the Acts of 1933 (Burns Ind. Stat. Ann., 1933, Sec. 13-116) provides in part as follows:

“Every inmate who is now or hereafter may be confined in the Indiana State Prison, Indiana Reformatory,

or Indiana Women'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." (Our italics.)

It will be seen that the above set out section provides in mandatory terms for the allowance of good time to all prisoners serving determinate sentences, but with this proviso, that such prisoners shall not be entitled to a diminution of sentence unless, among other things, they shall have no infractions of the rules and regulations of the institution.

The facts in the instant case indicate clearly that the prisoner Roy W. Davis deliberately left the premises of the Benton Farm, stole a car and drove to Indiana Harbor without any authority so to do. This action is unquestionably a violation and infraction of the rules and regulations of the Indiana State Prison. It follows that by virtue of this violation of the rules the prisoner has removed himself out of the operation and of the application of Sec. 1 of the Good Time Law, for the reason that this section sets up a classification of prisoners. It, in turn, says that all inmates who shall have no infraction of the rules and regulations of the institution *shall be entitled* to a diminution of time from his sentence as indicated in the table. It follows that if, in fact, he has an infraction of the rules he is no longer entitled to such diminution of his sentence.

I am, therefore, of the opinion that if a prisoner has violated any of the rules and regulations of the institution, or laws of the State of Indiana or laws of the United States he is no longer entitled to a diminution of his sentence under the Good Time Law, and that he has completely removed himself from the operations of Sec. 1 of the Good Time Law.

Sec. 2 of Chap. 164 of the Acts of 1933 (Burns Ind. Stat. Ann., 1933, Sec. 13-117) provides as follows:

“In case any inmate entitled to a diminution of sentence, as herein provided, shall knowingly violate any of the rules and regulations of the institution wherein he or she may be confined the warden or superintendent of such institution, by and with the consent and authority of the board of trustees thereof, shall have the power to deprive such inmate of any portion or all of the good time *gained.*” (Our italics.)

Section 2 above set out does not in any way conflict with section 1 of the Good Time Law. Section 1 is a self-executing statute which sets up a classification for inmates of our penal institutions, and which credits his good time there allowed if his conduct has satisfied the terms of the Act. Section 2, however, is a direct grant of authority to the warden and board of trustees to fine or penalize inmates of our penal institutions for the good time they have already earned because of the violation of any of the rules and regulations of the institution. In other words, section 2 gives to the warden the authority to deprive any inmate of any or all of the good time which such inmate may have earned up to the time of the violation of the rule or regulation for which he now appears before the warden.

It is to be noticed that the authority for thus depriving the inmate of his good time earned is vested exclusively in the warden or superintendent of the institution. The deputy warden cannot exercise such power, nor could the board of trustees of any institution acting independently take such action. The statute definitely states that such action must be taken *by the warden or superintendent, with the consent and authority of the board of trustees thereof.*

I am, therefore, of the opinion that the proper procedure for fining inmates on their good time credits for violation of the rules should be undertaken and instigated by the warden and passed upon and consented to by the board of trustees.

Under my interpretation of the two statutes above set out, as applied to the instant case of Roy W. Davis, the warden, with the consent of the board of trustees, may deprive Davis of all the good time which he had earned up to January 27, 1936, the day of his escape. Since his escape constitutes a

violation of the prison rules and regulations, Davis can no longer comply with the provisions of Sec. 1 of the Good Time Law and is no longer in that category of prisoners who are entitled to credits for good time. The end result, therefore, is that all of the good time which Davis has already earned or might earn can be taken away from him by the warden with the consent of the board of trustees. Therefore, the action of the parole board in setting him full time, which means fining him all the good time which it was possible to earn under a determinate sentence of 10 years, was proper, save for one thing—that the board can only pass upon and consent to such action as taken by the warden.

PUBLIC INSTRUCTION, SUPERINTENDENT OF: Right of Board of Education to make rules respecting payment of school relief fund.

November 19, 1937.

Hon. Grover Van Duyn,
Assistant Superintendent of Public Instruction,
Department of Education,
State House,
Indianapolis, Indiana.

My Dear Mr. Van Duyn:

I have before me your letter requesting an official opinion in answer to the following question:

“May the Board of Education withhold state school relief funds from a school corporation under any of the following conditions:

1. For a school in which the average daily attendance in the past year is fifteen or less.
2. For a school in which the township trustee refuses to furnish supplies recommended by the State Board of Education such as reference material, library and science equipment.
3. For a school in which the township trustee has neglected the upkeep of the building by refusing to decorate and supply other physical needs.
4. For a school whose commission has been revoked by the State Board of Education.