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tors or organizers, the character and qualifications and experience of the officers of the proposed financial institution, of the public necessity for the financial institution in the community in which such proposed financial institution is to be established, and, if the institution is to be a bank or trust company, of the adequacy of the proposed capital thereof;" all as required by Burns' 18-225, supra.

OFFICIAL OPINION NO. 25

June 19, 1959

Mr. Paul Myers, Chairman
Board of Correction
210 State House
Indianapolis, Indiana

Dear Mr. Myers:

We have your request for an Official Opinion which poses the following question:

"The question has arisen among the Institutional Parole Board members at our penal institutions as to whether or not the time spent in jail within the confines of Indiana, under a parole violation warrant, counts as active time on an individual's sentence, or whether this time is classified as dead time.

"Will you please give us your opinion on the question posed?"

The statutes which cover parole from the Indiana State Prison are Acts of 1897, Ch. 143, Secs. 3 to 11 and Acts of 1899, Ch. 113, Sec. 1, as found in Burns' (1956 Repl.), Sections 13-246 to 13-255. The statute which covers parole from the Indiana Reformatory is Acts of 1897, Ch. 53, Secs. 11 and 12, as amended, as found in Burns' (1956 Repl.), Sections 13-410 and 13-411. An examination of these statutes, together with the cases interpreting them, clearly indicates that a prisoner is not given credit for the time which expires between the date delinquency is declared and the date he is returned to the custody of the warden pursuant to the warrant issued for his arrest as a parole violator.
In the above case, it was clearly stated that time served in another state after a declaration of delinquency would not be credited to the parole violator; however the decided cases do not contain a specific statement as to time the prisoner is confined in an Indiana jail awaiting return to the prison under a parole violation warrant.

Burns' 13-250, supra, and Burns' 13-410, supra, both provide that the warrants for arrest of the parolee may be served by an officer authorized to serve criminal process within this state.

Burns' 13-251, supra, provides among other things that after the issuance of a warrant for the return of a parolee, if he has not yet been returned to the prison by the next meeting of the said Board, he shall then be declared delinquent and shall "whenever arrested by virtue of such warrant, be there-after imprisoned in said prison * * *"

Burns' 13-411, supra, expressly states, in part, that the delinquent prisoner on parole shall be liable "* * * when arrested, to serve out the unexpired term of his maximum possible imprisonment, and the time from date of his declared delinquency to the date of his arrest shall not be counted as any part or portion of time served." (Our emphasis) Thus, the legislative intent is quite clear that the period of delinquent time for which the parolee receives no credit is to be counted from the date of the declaration of delinquency to the date of his arrest as a parole violator. Although this statement is directed specifically to the Indiana Reformatory, the same result obtains in respect to the arrest of a parolee from the Indiana State Prison, since the purpose of the warrant is the retaking of the parolee to the prison, and the warrant is not executed until this is done. At the time the warrant is served the custody of the Warden has been reasserted and the only thing which prevents the immediate return of the parolee is the action of the state itself in holding the parolee in the county jail for trial or disposition of another charge.

Therefore, the making of such an arrest and the placing of a prisoner in an Indiana jail awaiting transportation to the
State Prison should be construed as a return to the custody of the warden or superintendent of the institution from which the inmate was paroled.


Such arrest and confinement would thus terminate the "dead time" and entitle the prisoner to credit on his original sentence for the time spent in such jail.

OFFICIAL OPINION NO. 26

June 29, 1959

Mr. Joe McCord, Director
Department of Financial Institutions
410 State House
Indianapolis 4, Indiana

Dear Mr. McCord:

This is written in answer to your letters of recent date requesting my Official Opinion concerning the interpretation of House Bill No. 43, being Ch. 110 of the Acts of 1959. Your letters set out five questions in regard to this recent enactment and each of these will be set out below and discussed in the order that it has been presented. All five of the questions concern Sec. 1, Ch. 110 of the Acts of 1959, which section in its entirety is as follows:

"SECTION 1. No instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of, shall be received for record or filing by the county recorder unless the name of the person who, and governmental agency, if any, which prepared such instrument appears at the conclusion of such instrument and such name is either printed, typewritten, stamped, or signed in a legible manner. An instrument will be in compliance with this section if it contains a statement in the following form: 'This instrument was prepared by (name)."