

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

August 9, 1957

To: John S. Foss, Chief Parole Officer—Division of Parole

Re: Status of Parole Violators under new law (c. 387, P. L. of 1957)

We have your request of July 12, 1957, for an opinion with regard to the status of parole violators who have violated their paroles prior to August 28, 1957. Chapter 387 of the Public Laws of 1957 makes several substantive changes in the parole law particularly with regard to loss of good time earned within an institution. The new law provides as follows:

“Sec. 15. Person violating parole. When a parolee violates a condition of his parole or violates the law, a member of the Board may authorize the Director in writing to issue a warrant for his arrest. A Probation-Parole Officer, or any other law enforcement officer within the State authorized to make arrests, may arrest the parolee on the warrant and return him to the institution from which he was paroled. At its next meeting at that institution, the Board shall hold a hearing. The parolee is entitled to appear and be heard. If the Board, after hearing, finds that the parolee has violated his parole or the law, it shall revoke his parole and remand him to the institution from which he was released. He shall serve his sentence according to the following provisions:

I. Sentence to State Prison.

A. If sentenced on a minimum-maximum basis, he is liable to serve the unexpired portion of his maximum sentence, forfeiting any deduction for good behavior during parole.

B. If sentenced to a definite term, he is liable to serve the unexpired portion of his sentence, forfeiting any deduction for good behavior during parole.

C. If sentenced to life imprisonment, he is liable to serve the unexpired portion of his sentence.

II. Sentence to Reformatory or State School.

A. He is liable to serve the unexpired portion of his sentence, forfeiting any deduction for good behavior during parole. This section does “not prevent the deduction for good behavior during the serving of the unexpired portion of the sentence, nor the re-parole of the prisoner or inmate in the discretion of the Board.”

The old law provided as follows:

Chapter 149 of the Revised Statutes of 1954, as amended—

“Sec. 20. Prisoner violating parole considered escaped prisoner.— A prisoner violating the provisions of his or her parole and for whose return a warrant has been issued by the parole board, shall, after the issuance of such warrant, be treated as an escaped prisoner owing service to the state and shall be liable, after arrest, to serve out the unexpired portion of his or her maximum sentence. The length of service owed the state in any such case shall be determined by deducting from the maximum sentence the time from date of commitment to the prison to date of violation of parole and such prison shall forfeit any deduction

made from his or her sentence by reason of faithful observance of the rules and requirements of the prison prior to parole or while on parole. This section shall not be construed to prevent time allowance by reason of faithful observance of the rules and requirements of the prison during the unexpired portion of such maximum sentence, or to prevent the re-parole of such prisoner in the discretion of the parole board.”

The major difference between the new law and the old law is that a parole violator on or after the effective date of Chapter 387 of the Public Laws of 1957 will *NOT* lose the good time earned in the institution but will only lose the good time earned while on parole.

Your question is:

“Will they (meaning parolees violating their paroles prior to August 28, 1957) automatically have the good time earned in the institution restored to them on August 28, 1957?”

We must answer your inquiry in the negative. A person’s rights are to be determined by the law that exists or existed at the happening of the event. A parole violator’s rights to good time or his right not to lose good time will have to be determined according to the law in existence upon the issuance of the parole violator’s warrant.

We have searched Chapter 387 in vain for any legislative intent that the new act was intended to restore institutional good time lost prior to the effective date of the act. Without such express intent, we are forced to the conclusion that Chapter 387 is prospective in nature and has no retroactive effect. For a similar interpretation when the Legislature imposed the forfeiture of good time upon parole violators, see Opinion of Breitbard, Deputy Attorney General, to Greenleaf, Commissioner, February 21, 1944, Report of the Attorney General of Maine, 1943-44, Page 120.

While we realize that this interpretation will cause some inequality among certain inmates, i. e., compare a parolee who violates parole on August 27, 1957, and who will lose all accumulated good time against a parole violator on August 28, 1957, who loses only his good time earned on parole; this matter is one for the Legislative Branch to consider and not one that is to be remedied by administrative interpretation by an executive officer.

ROGER A. PUTNAM
Assistant Attorney General

August 9, 1957

To Ernest H. Johnson, State Tax Assessor

Re: Franchise Tax on a Cooperative

In answer to your memo relating to taxation of an association organized under Chapter 56, R. S., as a cooperative for the purpose of manufacturing a commodity for the benefit of the patrons of the association as ultimate consumers, I call your attention to the provisions of Section 23 of Chapter 56, that the same provision as under the general law shall apply to fees payable to the State.

Section 21. . . . provides that these corporations shall pay the annual license fee required of other business corporations and, in our opinion, this is