

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1957 - 1958

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

not in lieu of all other corporation and franchise taxes, as provided in Chapter 35 which relates to agricultural cooperatives.

Section 1 subsection II-B provides that the maximum at which any return is paid on share or membership capital is limited to not more than 6%, and Section 10 refers to a limitation on paid-up capital. This capital must be set up in the by-laws of the corporation, if it is not set up in its articles of incorporation, and distributed to member patrons in proportion to their patronage.

Now, this should be deemed a fixed capital regulated by statute and fixed on the basis of membership capital. In answer to your specific question, what tax, if any, is applicable to a corporation created under Chapter 56, which you say has no stated fixed capital, we advise that the tax should be based on the minimum of \$10 under Section 106 of Chapter 16, until the corporation has filed an annual report under Section 41 of Chapter 53, showing the amount of capital held under its by-laws, and, if more than \$50,000, tax accordingly.

I further call your attention to another reason why corporations organized under Chapter 56 should be treated as other business corporations are, which is that Section 22 of Chapter 56 permits registration as dealers in securities upon the payment of the fees provided in Sections 228 to 238 of Chapter 59, and certificates of membership in a cooperative organized under Chapter 56 shall not be issued until the par thereof has been paid in full under Section 13, and to ascertain the par we must resort to the by-laws, as the capital does not have to be set up in the articles of incorporation.

The sale of these certificates comes within the provisions of the "Blue Sky" law, as the term "securities" under Section 231 of Chapter 57 covers certificates of interest in a profit-sharing agreement.

RALPH W. FARRIS
Assistant Attorney General

August 12, 1957

To Edmund S. Muskie, Governor of Maine

Re: Out-of-State Parolee Supervision

We have your memo requesting advice as to whether or not you may sign documents enabling the State of Maine to participate in the supervision of parolees and probationers to and from Puerto Rico and Hawaii.

We answer in the affirmative.

Chapter 19, Public Laws, 1957, amends the Uniform Act for Out-of-State Parolee Supervision to provide expressly that the word "State" as used in the Act" shall mean any state, territory or possession of the United States and the District of Columbia."

We would advise waiting until August 28, the effective date of the amendment, before executing such compact.

JAMES GLYNN FROST
Deputy Attorney General