

## Opinion No. 56-6378

February 3, 1956

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Mr. William J. Cooper, Director of Parole, P. O. Box 1219, Santa Fe, New Mexico

You have presented to this office for our opinion the questions:

1. May the Board of Parole cancel the accumulated statutory "good time" of a convict on parole?
2. When a parolee's agreement shows that his parole will expire on a certain date, may he be returned to the State Penitentiary after release from another penal institution at a subsequent date?
3. In view of the position taken hereafter on your first question, a further issue is raised. If the present Board of Parole may not cancel a parolee's statutory "good time" who may do so?

You describe the situation which raises your questions, as follows: A convict who was paroled from the State Penitentiary has, since his release on parole, been committed to a Federal correctional institution. He will be released from the latter on August 1, 1956. The parole agreement which was entered into between him and this State indicates that he would be on parole until June 18, 1956, at which time, presumably, he would have served his sentence imposed by this State. However, the date of discharge of sentence, June 18, 1956, was computed by giving this convict "good time" credit which he earned while he was serving his sentence in the Penitentiary in this State, and in addition, computing in advance the "good time" which was anticipated he would earn while on parole. This convict's conduct while on parole raises your questions.

Regarding your first question, it is the opinion of this office that the present Board of Parole is not authorized to cancel the "good time" earned by any convict either while in prison or upon parole. As you know, prior to 1955, the State Prison Board also served as the Parole Agency of this State. Section 41-17-6, N.M.S.A., 1953, now repealed. That Board further, as part of its duties as the governing body of the Penitentiary, had authority to cancel "good time" earned. That authority is still vested, as we view it, in that body. The above observation is made because the Legislature in 1955 created the present Board of Parole and transferred to it the parole authority previously vested in the Prison Board. Chapter 232, Laws of 1955. But in transferring to the new Board of Parole the parole authority we do not believe that the Legislature transferred to it the administration of the "good time" system. It is noticed that the first "good time" statute was passed in 1889. The old Parole Act came into existence in 1909. It seems to us that the "good time" statutes are more properly connected with, and therefore are a part of, the internal disciplinary system of the Penitentiary and not with our parole system.

The "good time" statutes, as we view them, are for the purpose of permitting a prisoner to shorten his sentence. See *Owens vs. Swope*, New Mexico Supreme Court No. 5960, Filed September 2, 1955. Parole authority and procedures on the other hand deal with the supervision of a convict who has been permitted to serve his sentence outside of the Penitentiary.

From the above we conclude that the Board of Parole created by the 1955 Legislature does not have the authority to cancel statutory "good time". Your first question is answered in the negative.

However, turning to Question No. 3, and from what has been said above, it is our conclusion that the Prison Board acting together with the Superintendent under the authority of § 42-1-57, N.M.S.A., 1953, still possess the authority to cancel statutory "good time". And since this office has ruled in a prior opinion that a convict on parole may earn "good time", we conclude that the Prison Board and the Superintendent may cancel "good time" earned while a convict is in prison or on parole. Attorney General's Opinions, 1937-1938, page 105.

It may be observed here that our ruling on your first and third questions will raise the problem of two Boards, i.e., the Prison Board and the new Parole Board keeping separate records on one convict, each affecting the other. However, we cannot see how that can be obviated under the present state of the law.

Regarding the second question, it is our opinion that "good time" earned may be cancelled by the Prison Board and Superintendent under Section 42-1-57, N.M.S.A., 1953, at any time prior to the service of sentence. Thus, if prior to this date there comes to the attention of the Prison Board and Superintendent that a parolee's conduct warrants forfeiture of "good time" earned, and the Board and Superintendent take action cancelling such "good time" the Board of Parole may issue its warrant under the procedure set out in Section 41-17-28, N.M.S.A., 1953, Pocket Supplement, to return that convict to the Penitentiary even though it is proposed to return him subsequent to the date when his original parole agreement indicates that the sentence imposed would have been served. Your second question, as qualified above, is answered in the affirmative.

Trusting the above answers your inquiries, we remain

By: Santiago E. Campos

Assistant Attorney General