

Opinion No. 72-57

October 17, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Winston Roberts-Hohl,
Assistant Attorney General

TO: Mr. John E. Hobbes, District Attorney, Eighth Judicial District, Raton, New Mexico
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QUESTIONS

FACTS

The City of Raton has made arrangement with the County Commissioners of Colfax County to use the County Jail for confining city prisoners who are convicted in Municipal Court and sentenced to jail terms. When a defendant is convicted in Municipal Court and sentenced to jail, the City Police turn the prisoner over to the sheriff who confines the prisoner in accordance with the judgment of the Municipal Court.

QUESTIONS

1. May a prisoner committed to the County Jail through Municipal Court under the above arrangement be given deduction of time for good behavior?
2. May a prisoner committed to the County Jail by a magistrate in the county be given deduction for good behavior?

CONCLUSIONS

1. Yes.
2. Yes.

OPINION

{*91} ANALYSIS

The analysis required to answer your question necessarily extends to a discussion of classifications in context of one's right under the Equal Protection Provisions of the United States and New Mexico Constitutions. Section 42-2-7.1, NMSA, 1953 Comp. (2nd Repl. Vol. 1972), reads in part:

A. The sheriff of any county with the approval of the district judge may grant a person imprisoned in the county jail a deduction of time from any term of his sentence for good

behavior, industry and obedience. Deductions of time shall not exceed one-third [1/3] of the term of the prisoner's original sentence. . . .

B. A part or all of the prisoner's accrued deductions may be forfeited for any conduct violation. The sheriff shall keep a record of all forfeitures of accrued deduction and the reasons for the forfeitures.

C. No other time allowance or credits in addition to deductions of time permitted under this section may be granted to any prisoner.

We are of the opinion that the fact that one prisoner committed to the county jail was sentenced in the municipal court and another was sentenced in a district court does not provide sufficient basis for classifying those two prisoners differently for purposes of granting credit for good behavior. The controlling principle in the case of every prisoner who is committed is that he should be treated in a manner similar to every other prisoner unless there is some constitutionally acceptable reason for a different treatment. See **Davis v. Lindsey**, 321 F. Supp. 1134 (S.D. N.Y. 1970); **Concklin v. Hancock**, 334 F. Supp. 1119 (D., N.H. 1971). Credit for good behavior has a direct bearing on the actual deprivation of a person's liberty which involves rights that may not be lightly regarded. See **Argersinger v. Hamlin**, 404 U.S. 92 S. Ct. 2006, decided June 12, 1972.

2. The rationale advanced in answer to question 1 adequately indicates that the answer to question 2 is in the affirmative. The Court from which the sentenced individual came should not determine the benefits afforded the incarcerated individual.