

## Opinion No. 12-878

April 18, 1912

**BY:** H. S. CLANCY, Assistant Attorney General

**TO:** Hon. John D. McManus, Supt. New Mexico Penitentiary, Santa Fe, New Mexico.

### **PAROLING PRISONERS.**

Prisoner escaping when under parole is not entitled to good time.

### **OPINION**

{\*22} I have your letter of the 12th inst. in which you ask for the opinion of this office upon the following matters:

1. After the recapture of an escaped prisoner, does he or does he not, earn State good time the same as before his escape?
2. Is not a parole violation treated the same as an escaped convict upon recapture?
3. Also, what effect does a fine and costs attached to a man's sentence have on his application for parole, when he has served his minimum sentence?

Replying to the first inquiry I have to say that by Section 3537, C. L. 1897, whenever any convict shall have escaped, he shall forfeit so much of his good time as the penitentiary board and superintendent shall determine.

{\*23} Replying to the second question I have to say that by the provisions of Section 8, Chapter 32, Session Laws 1909, any prisoner who shall violate the conditions of his parole is to be treated as an escaped prisoner and shall be liable when arrested to serve out the unexpired term of his maximum possible imprisonment, and the time from the date of his delinquency to the date of his arrest shall not be counted as any portion or part of the time served by him.

As to the third question, by reference to Section 2 of Chapter 45, Laws of 1909, you will see that convicts who are sentenced to the penitentiary and who have been also sentenced to pay a fine and costs shall not be required to serve more than thirty days for such fine or costs. It is the opinion of this office that any prisoner who may have been sentenced to pay a fine and costs, and such fine and costs have not been paid at the expiration of his minimum sentence, must serve for thirty days before he would be entitled to release on parole.