

**Indeterminate Sentence—Deduction of Time for Good Behavior—How Computed.**

In allowing deductions for good behavior under an indeterminate sentence under Section 9737 of the Revised Codes of 1907, the minimum sentence is determined without any consideration being given to the maximum and the maximum without any consideration to the minimum. Each is computed separately and independently of the other.

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My dear Mr. Swarthout:

Your office has submitted for my opinion the question whether, when an indeterminate sentence is given, the maximum sentence should be used in computing the credit for good behavior that may be allowed

under Section 9737 of the Revised Codes of 1907, and whether this computation is affected in any way by the length of the term of the minimum sentence pronounced.

In the case of *Stephens v. Conley*, 48 Mont. 352, the Supreme Court, in construing Section 9737, used the following language:

"Among the powers and duties of the board, section 9737, Revised Codes, provides the following: 'The board is hereby authorized and required to grant to any convict confined in the state prison, who shall well behave himself and who shall perform regular labor during good health, either within or without the state prison inclosure, a credit of the time from his sentence as appears in the following table.' The table mentioned designates in months the credits which may be earned. Upon a four year term they aggregate ten months. But it is to be observed, in the first instance, that by the language of the statute any allowance for good conduct or efficient labor has its source in a grant from the prison board, and does not spring from the operation of the law itself. The section quoted implies that some investigation must be made by the board, and a judgment formed thereon. There must be a finding that the convict has well behaved himself, and that he has performed regular labor during good health. These are conditions precedent to his right to any credits. Section 9738 seems to indicate a course of procedure for the board. In order to carry out the purpose of these statutes, the board must investigate the record of every convict, probably at the end of every year of his service, and grant the proper credits if earned, for the section declares that, if after a credit has once been earned, the convict commits any of the offenses enumerated, the board shall, upon proof of the fact, after notice to the convict, forfeit all deductions of time earned before the commission of such offense."

From this case it appears that the method by which credits for good behavior are to be deducted from the term of a sentence is by the action of the Board as provided in Section 9737 of the Revised Codes. This section contains a complete table giving the number of years of sentence up to 25 years, with deductions that may be granted year by year, the total good time made, and the net time to be served if full time is made. This table is part of the law, and all that is necessary in making the computation is to apply the table to any number of years that may be named in the judgment of sentence. In applying the table to a maximum sentence the computation is made without consideration of the minimum, and conversely, when applying the table to a minimum sentence, no consideration is given to the maximum figure. They are computed entirely independently of each other.

This question has been the subject of an opinion by a former Attorney General, found at page 89 of Volume 6 of the Opinions of the Attorney General, with which this is in conformity.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.