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Sentence, Commutation Of. Convicts, Commutation of Sentence. Convicts, Escape Of. Escape of Convicts, Punishment For. Good Time, Allowance Of.

When a convict in the state prison escapes and is recaptured and sentenced for such escape, under the provisions of Sec. 8222 Revised Codes, the second term of imprisonment will commence at the time the convict's first term would have expired had he not escaped. The good time allowed such convict under the provisions of Sec. 9737 must be allowed.

January 17, 1912.

Mr. Frank Conley,
Warden, State Prison,
Deer Lodge, Montana.

Dear Sir:

I acknowledge receipt of your letter of the 8th inst., in which you enclose the names and data concerning convicts who have escaped from the state prison and have been recaptured, and in which you ask my official opinion as to "whether the good time they earned during the former sentence will be taken away from them or allowed."

Sec. 9737, Revised Codes, provides for the commutation of sentence upon good behavior. Sec. 9738 provides for the forfeiture of such commutation, but provision is made that the board of prison commissioners have authority to forfeit the good time earned by the prisoner pursuant to the provisions of Sec. 9737 upon notice to the offender and after due proof. However, Sec. 8222, Revised Codes, provides:

"Every prisoner confined in state prison for a term less than for life who escapes therefrom is punishable by imprisonment in the state prison for a term of not less than one year nor more than ten years; said second term of imprisonment to commence from the date he would have otherwise been discharged from said prison."

This Section 8222 is identical with section 105 of Kerr's Penal Code of California. This section of the California Code has been construed in *Exparte Irwin*, 25 Pac. (Calif.) 1118, in which case the following language was used:

Said section "plainly states that the term of imprisonment

for an escape from the prison shall commence to run from the time the prisoner would have been discharged from the prison if he had not escaped therefrom."

In other words, as construed by the supreme court of California, Sec. 8222 provides the only punishment for an escape from the prison and that upon conviction for such escape the term of imprisonment will commence at the time the convict's first time would have expired had he not escaped. This necessarily implies that the good time to which he is entitled under the provisions of Sec. 9737 would be allowed him and that his second imprisonment would commence from the time that his first sentence would have expired under the provisions of Sec. 9737.

It is therefore my opinion that in the case presented by you that the good time earned by the convict during the former sentence should be allowed.

Yours very truly,

ALBERT J. GALEN

Attorney General.