

with the rules and regulations as set by statute and the Board of Prison Commissioners for first offenders.

June 6, 1953.

Mr. Fred Douglas, Superintendent
Montana State Bureau of Criminal
Identification and Investigation
Headquarters, Montana State Prison
P. O. Box No. 7
Deer Lodge, Montana

Dear Mr. Douglas:

Your letter of April 23 requests an opinion on the following question:

"Should a first offender in the Montana State Prison be credited with 'good time' as such, or 'loser's time,' when his case history reveals one or more commitments to state industrial schools and/or federal reformatories, as a juvenile offender but no previous convictions as a felon?"

Chapter 7 of Title 80, R. C. M., 1947, provides for the State Prison, State Board of Prison Commissioners and the various powers and duties delegated thereto. Section 80-739, R. C. M., 1947, provides in part that:

"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 inclosures, a credit of the time from his sentence as appears in the following table, for respective years of his sentence, and pro rata for any part of a year when the sentence is for more or less than a year. . . ." (Emphasis supplied.)

Section 80-740, R. C. M., 1947, provides for additional good time and is in part herein set forth:

"The Board of Prison Commissioners is hereby authorized and required to adopt rules and regulations applicable to all convicts employed upon any prison work or activity whereby said convicts so employed, but only while so employed, may be granted additional good time allowance, in

Opinion No. 25.

**State Board of Prison Commissioners—
Good Time—Statutory Time—Convicts—First Offenders—Prior Offenders—State Juvenile Institutions—Federal Reformatories—Felony Convictions.**

HELD: A convict with no prior felony convictions who may have had one or more commitments to state juvenile institutions or federal reformatories within or without the State of Montana, is a first offender and should be credited with good time in accordance

addition to that now provided by the preceding section for good conduct . . . provided, said rules may grant not to exceed an additional good time allowance of 10 days per month . . ."

The Montana Supreme Court has ruled that the right to a reduction in term as "good time" is purely statutory and controlled by the Legislature and may be acquired in the manner and under the circumstances pointed out by the statute. *Stevens v. Connelly*, 48 Mont. 352, 138 Pac. 189, and *State ex rel. Hollis vs. the District Court*, Mont., 238 Pac. (2d) 909.

Therefore, the good time acquired by an inmate in accordance with Section 80-739, supra, applies to all qualified inmates whether they are first offenders or prior offenders. It is only in the second statutory provision above mentioned where latitude is allowed by the legislature to differentiate between a prior offender and a first offender in the amount of additional good time he may earn. The statute requires rules for all convicts in that respect but leaves discretion in the board as to the amount of time that may be earned by the different classes of convicts. It is here that the question you present manifests itself.

Section 10-611, R. C. M., 1947, states in part:

"No commitment of any such delinquent child to any institution under this Act shall be deemed commitment to a penal institution. No adjudication upon the status of any delinquent child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any delinquent child be deemed a criminal by reason of such adjudication, nor shall such adjudication be deemed a conviction, nor shall any child be charged with or convicted of any crime in any court except as provided in the preceding section of this Act. The disposition of the delinquent child or any evidence given in the court shall not be admissible as evidence against the child in any other case or proceeding."

The statute is clear and unambiguous. The statute is to be construed according to the fair import of its

terms with a view to its object and to promote justice. Section 94-101, R. C. M., 1947. Therefore, for the purposes set forth in the statute and in the courts of law, a juvenile commitment is not a criminal conviction. The term "first offender" as used with respect to the state prison refers only to initial felony convictions, since all inmates in the state penitentiary are received as the result of felony convictions. Section 94-114, R. C. M., 1947.

Therefore, since, by statute, the inmate has no felony record, he should be accorded all the rights of a convict with no prior convictions.

It is therefore, my opinion that a convict with no prior felony convictions who may have had one or more commitments to state juvenile institutions or federal reformatories within or without the State of Montana, is a first offender and should be credited good time in accordance with the rules and regulations as set by statute and the Board of Prison Commissioners for first offenders.