

VOLUME 31

Opinion No. 1

**PRISONERS; Good time; restoration of good time once forfeited—
Section 80-740, Revised Codes of Montana, 1947.**

**HELD: A Montana state prisoner's good time, earned and later forfeited
under Section 80-740, R.C.M. 1947, cannot be restored.**

April 1, 1965

Mr. W. E. Shaffer, Director
State Board of Pardons
316 Main Street
Deer Lodge, Montana

Dear Mr. Shaffer:

You have requested my opinion whether legal authority exists "to restore a prison inmate's lost good time, earned prior to parole . . . in cases where there is a parole violation and subject is returned to the prison, and his earned good time is taken from him."

Section 80-740, R.C.M. 1947, provides that earned good time may be forfeited for a violation of the rules and regulations prescribed by the department of public institutions or warden. No statutory authority exists for the restoration of good time lost through forfeiture resulting from a parole violation. Therefore, if a power to restore good time exists at all, it can exist only as a power which is necessarily implied under the statute.

The Montana Supreme Court has held that state officers and agencies have no implied powers other than those necessary for the effective exercise of those powers expressly conferred (**State ex rel. Dragstedt v. State Board of Education**, 103 Mont. 336, 62 P. 2d 330 (1936)). The statute does not expressly confer any power in the department or warden to restore lost good time. Further, it does not appear that the power to restore lost good time is necessary for the effective exercise of the power to forfeit which is expressly conferred.

It should also be noted that the statute expressly mentions the authority to forfeit good time but makes no reference whatsoever to any authority to restore good time. In this connection the Supreme Court has held that where there is an express mention of certain authority in a statute, the mentioning of it implies the exclusion of any other authority. **Reed v. Reed**, 130 Mont. 409, 304 P. 2d 590 (1956).

For these reasons it is my opinion that an inmate's lost good time, once forfeited, cannot be restored.

Very truly yours,

FORREST H. ANDERSON
Attorney General

FHA:WGS:jh