

Subject

*State Board of
Penal Institutions*

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

June 4, 1974

Opinion No. 74- 171

Mr. Bernard J. Dunn
Legal Counsel
Office of Director of Penal Institutions
11th Floor
State Office Building
Topeka, Kansas 66612

Dear Mr. Dunn:

In your letter of May 13, 1974, you inquire whether the work release supervisor or coordinator can become criminally liable for failure to report to the appropriate legal authorities a minor and insignificant violation of the extended limits of an inmate's confinement under the "work release" program.

K.S.A. 1973 Supp. 75-5267 authorizes the Secretary of Corrections to establish a work release program. K.S.A. 1973 Supp. 75-5269 provides penalties for a prisoner who fails to remain within limits of his extended confinement, as established under the program, or who fails to return within the time prescribed. The statute provides as follows:

"The willful failure of an inmate to remain within the extended limits of his confinement or to return within the time prescribed to an institution or facility designated by the secretary shall be deemed an aggravated escape from custody as provided for in K.S.A. 1972 Supp. 21-3810."

Your inquiry, then, is whether the work release supervisor or coordinator would be liable under K.S.A. 1973 Supp. 21-3811, "aiding escape," or K.S.A. 21-3812, "aiding a felon or person charged as a felon," if he failed to report certain minor violations of the conditions imposed on the inmate in connection

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with his participation in the program. You point out that there are situations in which the work release coordinator, as the Secretary's designated representative, would prefer, for the good of the inmate, to assess some minor punishment against the inmate without reporting the crime of aggravated escape to the county attorney. You further point out that the work release coordinator, under the authority of the Secretary of Corrections, is the individual who sets the extended limits of confinement for the purposes of the work release program and may adjust, restrict, or further extend these limits. In addition, you mention that the work release coordinator is neither attempting nor intending to condone or conceal any action by the inmate which amounts to a significant violation of either the purposes or the perimeters of his extended limits.

We are not in a position to establish a general rule which would absolve the work release coordinator from the suggested criminal liability in all situations involving his failure to report violations to the appropriate authorities. However, if, as you suggest, he is not attempting to condone or conceal any significant violation by an inmate, then it would appear that the discretion with which he is vested by statute to establish the individual conditions and terms for inmates in the program would enable him to make a post facto modification of such terms and conditions which would be in the inmate's best interest. As such, it is our opinion that he would not be subject to criminal liability for failure to report violations of a minor and technical nature.

Very truly yours,



VERN MILLER
Attorney General

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