STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

March 17, 1977

ATTORNEY GENERAL OPINION NO. 77- 99

Mr. Devon Knoll
Director
Kansas Adult Authority
818 Kansas Avenue
Topeka, Kansas

RE: Criminal Procedure - Release Procedures - Parole Eligibility

SYNOPSIS: Under former K.S.A. 1971 Supp. 22-3717, an offender less than 21 years of age sentenced to life imprisonment was not eligible for parole consideration until 15 years after the date of sentence.

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Dear Mr. Knoll:

Your inquiry to this office raises a question concerning the parole eligibility of an inmate now incarcerated at the Kansas State Penitentiary.

As revealed by your letter, the inmate in question entered a plea of *nolo contendere* to a charge of first degree murder on April 17, 1972, and was sentenced by the Court to life imprisonment as required by K.S.A. 21-4501(a). At the time of imposition of sentence, the defendant was less than 21 years of age. Eligibility for parole consideration was then governed by K.S.A. 1971 Supp. 22-3717, since repealed[1], which provided in pertinent

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[1] L. 1974, ch. 403, §10, effective July 1, 1974. The 1974 law substantially modified the pre-existing parole eligibility system and specifically abolished the "16 month rule" here in question. See Op. Atty. Gen. No. 75-232. The present parole eligibility statute, codified as K.S.A. 1976 Supp. 22-3717, retains the basic structure established in 1974.

part as follows:

> "(2) Persons confined in institutions shall be eligible for parole
> (a) After 15 years if sentenced to life imprisonment or to a minimum term which, after deduction of work and good behavior credits, aggregates more than 15 years;
> (b) After 16 months if sentenced pursuant to conviction for a first offense to a minimum term which, after work and good behavior credits, aggregates more than 16 months, and the person sentenced is under 21 years of age at the time of sentence."

The inquiry to your office which precipitated your request assumes the applicability of subsection (2)(b) of the statute in arguing that the particular inmate was eligible for parole after 16 months from the date of sentence. It is contended that the Board of Parole (now the Kansas Adult Authority) improperly denied parole eligibility because of its belief that life imprisonment did not constitute a minimum term of confinement but was rather a "flat" sentence without a minimum component. Thus, the argument concludes that the inmate was erroneously denied the benefit of the 16 month provision because of the Board's belief that his life sentence did not constitute a minimum term under subsection (2)(b).

Although the Kansas Supreme Court, in *State v. Sargent*, 217 Kan. 634, 538 P.2d 696 (1975) declared that a life sentence did constitute a minimum sentence under the Kansas statutes, we believe that the inquiry to your office erroneously assumes the applicability of subsection (2)(b) and that the *Sargent* decision is simply inapplicable in the present case. In our opinion, the issue of whether a life sentence constitutes a minimum sentence is extraneous to the resolution of the inquiry herein because K.S.A. 1971 Supp. 22-3717(2)(b) did not extend parole eligibility to youthful offenders sentenced to life imprisonment. We reach this conclusion not because a life sentence is not a minimum sentence under the law, but because we believe subsection (2)(a) of the statute to be the governing statutory provision on these facts.

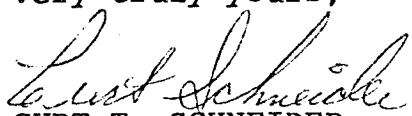
The letter to your office assumes that the phrase "minimum term" in §(2)(b) encompasses all possible minimum terms of confinement, including life imprisonment. However, examination

of subsequent language of the provision reveals that it applies only to minimum terms to which good-time credits are applicable. It has been consistently recognized that a term of life imprisonment is not susceptible to the application of good-time credits because of the obvious impossibility of determining a date definite from which they could be deducted. Subsection (2)(a) plainly demonstrates the legislature's recognition of this distinction between life terms and other minimum sentences by indicating that good-time credits would apply only to minimum sentences other than life imprisonment. Thus, it is apparent that the legislative reference to the matter of good-time credits in §§(2)(a) and (2)(b) of the statute was not without intended significance and that the legislature did not intend that life sentences be within the scope of §(2)(b).

Moreover, adoption of the construction urged upon the Authority by the inmate would create an internal inconsistency between the statutory provisions which we do not believe was intended by the legislature. Subsection (2)(a) by its terms clearly and unambiguously applies to this inmate's case since he was sentenced to life imprisonment for the offense of first degree murder and was thus eligible for parole after 15 years. However, the applicant's construction would mean that despite the clear provisions of subsection (2)(a), §2(b) implicitly fashioned an exception for offenders under the age of 21 sentenced to life imprisonment and rendered them eligible for parole only 16 months after sentencing. Notwithstanding the factor of the age of the offender, we cannot readily impute to the legislature an intent to permit such immediate parole eligibility for a prisoner convicted of a class A felony, the most serious category of offenses under the Kansas Criminal Code. K.S.A. 21-4501.

To recapitulate, we believe that the parole applicant described in your inquiry is not eligible for parole consideration until after 15 years from the date of sentence as reflected in the journal entry. Accordingly, we conclude that the Adult Authority has correctly determined the inmate not to be eligible for immediate parole consideration under the law.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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