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ATTORNEY GENERAL OPINION NO. 84- 17

Charles E. Simmons
Chief Legal Counsel
Kansas Department of Corrections
700 Jackson
Topeka, Kansas 66603

Re: Criminal Procedure -- Code; Release Procedures --
Conditional Release; Enforcement of Conditions

Synopsis: Release of an inmate upon attaining his or her conditional
release date is mandatory.

The Kansas adult authority may impose conditions upon
conditional releasees to the same extent as upon parolees.

The Kansas adult authority may revoke a violator of
conditional release in the same manner as a parole
violator.

Achievement of a conditional release date by a person
on parole does not change in any way the obligations
imposed as conditions of parole. Cited herein:
K.S.A. 22-3718, K.S.A. 1983 Supp. 75-5217, K.A.R. 45-7-1,
45-10-1.

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Dear Mr. Simmons:

As chief counsel for the Department of Corrections you have requested
our opinion regarding several issues related to conditional release
of persons sentenced to the custody of the Secretary of Corrections.

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Specifically you ask whether an inmate must be released upon achieving his or her conditional release date; whether the Kansas Adult Authority (K.A.A.) may impose conditions on a conditional releasee; whether the K.A.A. may revoke a conditional release for violation of conditions imposed; and what if any effect does achievement of the conditional release date have on a present parole status.

The first issue is whether an inmate's achievement of the conditional release date mandates his release from inmate status. Kansas Administrative Regulation (K.A.R.) 45-10-1(a) states: An inmate shall be granted conditional release when he or she has served the maximum sentence less statutory authorized good time credits.

The mandatory release of inmates achieving conditional release has long been recognized.

"It should be indicated here that the distinction between 'parole' and 'conditional release' is worth noting. In the former instance, release from confinement is discretionary with the Board of Probation and Parole, while 'conditional release' is mandatory, the time being computed by deduction from the maximum term for 'good time' and 'incentive credits', and is the equivalent of a sentence served completely." Smith v. Crouse, 298 F.Supp. 1029, 1033 (D. Kan. 1968). See Attorney General Op. No. 82-187.

We therefore conclude that an inmate achieving his conditional release date must be released. As you acknowledge in your letter, the K.A.A. has no authority to revoke good time credits earned while on inmate status.

You next ask whether the K.A.A. may impose conditions on a conditional release. K.S.A. 22-3718 states:

"An inmate who has served his maximum term or terms, less such work and good behavior credits as have been earned, shall, upon release, be subject to such written rules and conditions as the authority may impose, until the expiration of the maximum term or terms for which he was sentenced or until he is otherwise discharged."

We therefore conclude that the K.A.A. may impose conditions upon a conditional release.

The third issue you present is whether the K.A.A. may revoke a conditional release.

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K.S.A. 1983 Supp. 75-5217(a) states in pertinent part:

"At any time during release on parole or conditional release, the secretary of corrections may issue a warrant for the arrest of a released inmate for violation of any of the conditions of release. . . ."

Subsection (b) in part states:

"If the violation is established to the satisfaction of the Kansas adult authority, the authority may continue or revoke the parole or conditional release, or enter such other order as the authority may see fit."

We conclude that the Kansas adult authority may revoke a conditional release. From the language of the statute it appears that the legislature intended that parolees and conditional releasees be afforded equal treatment when before the authority for violation of conditions imposed. For example, if a parolee, upon revocation, might be passed to any date up to his maximum release date before the authority would again consider release, so too might a revoked conditional releasee be passed up to his maximum release date.

As a corollary of this issue, you inquire about the degree of specificity required of the conditions imposed by the authority. Any revocation of release necessarily implicates due process protections. Morrissey v. Brewer, 408 U.S. 471, 33 L.Ed.2d 484, 92 S.Ct. 2593 (1972). In re Uphoff, 7 Kan.App.2d 301, 641 P.2d 406 (1982). One key aspect of due process is the requirement of notice. K.A.R. 45-7-1(b) states in part:

"The condition shall be sufficiently specific to serve as a guide to supervision and to enhance the parolee's parole performance."

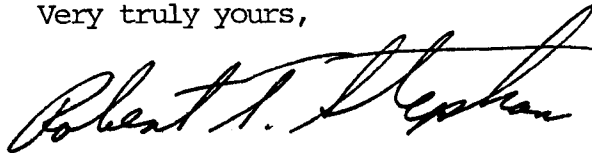
Since we have concluded that a releasee should be considered as a parolee for purposes of revocation, conditions imposed in accord with K.A.R. 45-7-1 should specifically and definitely set forth the conditions imposed, in order to comport with the constitutional requirements of due process of law.

Finally, you were also concerned with the effect of achievement of a conditional release date by a parolee. For the reasons previously discussed, we see no valid distinction regarding the imposition, supervision, or revocation of individuals on a release status, whether

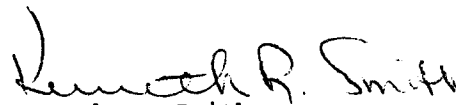
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conditional releasee or parolee. Therefore, achievement of a conditional release date by a person on parole does not change in any way the obligations imposed as conditions of parole.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Kenneth R. Smith
Assistant Attorney General

RTS:JEF:KRS:may