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ATTORNEY GENERAL OPINION NO. 81- 283

Dr. Carrol Mills
Chairperson
Kansas Adult Authority
535 Kansas Avenue, Room 910
Topeka, Kansas 66603

Re: Criminal Procedure - Release Procedures - Parole Authority and Procedure; Limitations

Synopsis: L. 1981, Ch. 156 §2(g) does not require that an inmate convicted of a class A, B or C felony by reason of aiding, abetting, advising or counseling another to commit a crime, or by reason of the principle provided for in subsection (2) of K.S.A. 21-3205, serve one-half of the minimum term of imprisonment imposed by the court. Rather, the law requires that the inmate serve one-half of the term of imprisonment which would be required had not the aiding, abetting, etc. come into play. Thus, on a class A felony conviction, parole eligibility would occur after seven and one-half years of confinement and on a class B or C felony conviction, parole eligibility would occur after service of one-half of the minimum sentence imposed less good time credits available. Cited herein: L. 1981, Ch. 156.

* * *

Dear Dr. Mills:

You have requested our interpretaton of section 2(g) of chapter 156 of the 1981 Laws of Kansas, which relates to parole eligibility of an inmate convicted of a class A, B or C felony by reason of aiding, abetting, advising or counseling another to commit a crime or by reason of the principle set out in subsection (2) of K.S.A. 21-3205. More specifically, you inquire whether inmates convicted as described above may be considered parole eligible after having served a period of time calculated by determining one-half of the minimum sentence less good time credits or whether such inmates are parole eligible only after serving one-half of the minimum sentence imposed.

Said section 2(g) provides:

> "Notwithstanding the provisions of subsections (a) and (b), an inmate who has been convicted of a class A, B or C felony by reason of aiding, abetting, advising or counseling another to commit a crime or by reason of the principle provided for in subsection (2) of K.S.A. 21-3205 and amendments thereto may be certified as parole eligible by the secretary of corrections at any time after the inmate has served 1/2 of the term of imprisonment which such inmate would otherwise be required to serve under this section." (Emphasis supplied.)

The following hypothetical sentence would appear appropriate to illustrate your inquiry:

> An inmate receives a sentence of not less than fifteen years nor more than life following conviction of a class B felony. No repeat offender or firearm issues are applicable, and the court finds that the conviction was by reason of aiding, abetting, etc.

As you have indicated in your request, pursuant to rules and regulations promulgated by the Kansas Adult Authority, an inmate receiving a fifteen year minimum sentence, absent considerations not relevant to this discussion, could earn good time credits totalling seven years. In that respect, the inmate would achieve parole eligibility after eight years incarceration.

With the foregoing example in mind, you question whether parole eligibility calculations for persons subject to the provisions of said section 2(g) should require that the inmate be incarcerated for one-half of the minimum sentence imposed (one-half of fifteen years) prior to parole eligibility or whether the inmate need be incarcerated for only one-half of the minimum sentence imposed less available good time credits (one half of eight years).

In Johnson v. McArthur, 226 Kan. 128 (1979), the Supreme Court of Kansas commented on the fundamental rule of statutory construction, as follows:

> "The fundamental rule of statutory construction, to which all other rules are subordinate, is that the purpose and intent of the legislature governs when that intent can be ascertained from the statutes. When a statute is plain and unambiguous the court must give effect to the intention of the legislature as expressed, rather than determine what the law should or should not be. Thomas County Taxpayers Ass'n v. Finney, 223 Kan. 434, 573 P.2d 1073 (1978)." 226 Kan. at 135.

In giving effect to the intent of the legislature, courts "must consider the language of the statute; its words are to be understood in their plain and ordinary sense." Lakeview Gardens, Inc. v. State, ex rel, Schneider, 221 Kan. 211, 214 (1976). Moreover, it is not the function of the courts to expand or broaden the plain letter of a statute. State v. One Bally Coney Island No. 21011 Gaming Table, 174 Kan. 757, Syl. para. 2 (1953). Finally, and of particular pertinence here, we note the following statement of the Court in Rogers v. Shanahan, 221 Kan. 221 (1977):

> "When . . . the resolution of a question requires construing a statute, the court is guided by certain presumptions. It is presumed the legislature understood the meaning of the words it used and intended to use them; that the legislature used the words in their ordinary and common meaning; and that the legislature intended a different meaning when it used different language in the same connection in different parts of a statute. See 82 C.J.S. Statutes, §316(b) (1953); See also, Rausch v. Hill, 164 Kan. 505, 190 P.2d 357." (Emphasis supplied.) Id. at 223, 224.

With the foregoing principles of statutory construction in mind we now turn to the key language of said section 2(g), i.e., "1/2 of the term of imprisonment which such inmate would otherwise be required to serve under this section." The plain and unambiguous language of the statute provides that inmates convicted pursuant to the enumerated principles are parole eligible after having served one-half the term of imprisonment they would be required to serve had not one of the principles, i.e., aiding, abetting, etc., come into play. As previously indicated, the term such inmate would be required to serve on a class B or C felony would be the "entire minimum term imposed by the court, less good time credits." L. 1981, Ch. 156, §2(b). Parole eligibility following conviction of a class A felony would result after fifteen years of imprisonment. L. 1981, Ch. 156, §2(a)(1). [Note: Class A felonies are unaffected by good time credits, see K.A.R. 44-6-102(d)(3)(A).]

It must be presumed that had the legislature intended parole eligibility for such inmates only after imprisonment for one-half of the minimum sentence imposed by the court it would have so stated. Rogers v. Shanahan, supra. In our opinion the language of the statute establishes parole eligibility, in the case of class B and C felonies, after an inmate has served one-half of the minimum sentence imposed less available good time credits. With respect to class A felonies, the inmate would be parole eligible after serving seven and one-half years, which constitutes one-half of the term of imprisonment otherwise required.

In closing we would note that the conclusions reached herein as to the parole eligibility date are subject to modification due to loss of good time credit. K.A.R. 45-2-1. Additionally, nothing stated herein should be construed as indicating that the inmate should be released on parole following the stated term of imprisonment, but rather, that such term of imprisonment is the minimum which must be served before initial consideration for release on parole.

Very truly yours,

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RTS:JEF:may