



STATE OF KANSAS

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November 30, 1988

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ATTORNEY GENERAL OPINION NO. 88- 151A

Charles E. Simmons
Chief Legal Counsel
Department of Corrections
Landon State Office Bldg., Suite 400-N
Topeka, Kansas 66612

Re: Crimes and Punishments -- Kansas Criminal Code --
Classification of Crimes and Penalties --
Conviction for Second and Subsequent Felony
Offenses; Class A Felonies

Synopsis: An inmate whose life sentence for a Class A felony is enhanced pursuant to the habitual criminal act is eligible for parole after serving 15 years for each life sentence ordered. To the extent that Attorney General Opinion No. 88-151 is in conflict, that opinion is withdrawn. Cited herein: K.S.A. 21-107a (Corrick); K.S.A. 1987 Supp. 21-4504; K.S.A. 1987 Supp. 22-3717, as amended by L. 1988, ch. 115, § 1.

* * *

Dear Mr. Simmons:

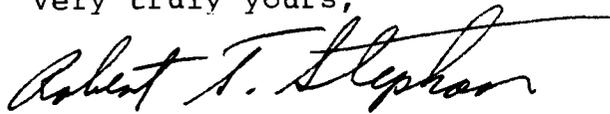
As Chief Legal Counsel for the Department of Corrections, you have requested our opinion regarding the effect of applying the provisions of K.S.A. 1987 Supp. 21-4504 to a defendant who has been sentenced for a Class A felony. Specifically, you ask whether sentencing as an habitual offender increases the term the defendant must serve in order to achieve parole eligibility.

In State v. Baker, 237 Kan. 54 (1985), the Court held that a life sentence may be enhanced pursuant to the habitual criminal act. Citing State v. Beasley, 205 Kan. 253, cert. denied, 401 U.S. 919 (1971), the Court stated that the legislative purpose and intent behind our present habitual criminal act is the same as the purpose behind K.S.A. 21-107a (Corrick). The punishment for an habitual criminal is more severe than punishment for a first time offender because the previous punishment failed to reform the habitual criminal. 237 Kan. at 56-57. Implicit in the Court's opinion is the proposition that the minimum duration of confinement is increased by enhancing a life sentence. It would be meaningless to allow or mandate sentence enhancement without also delaying the parole eligibility date.

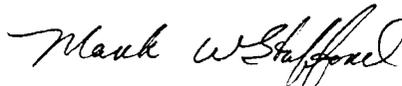
Our interpretation of Baker is not in conflict with K.S.A. 1987 Supp. 22-3717(b), as amended by L. 1988, ch. 115, § 1, because that section does not make provision for life sentences enhanced by the habitual criminal act. Rather, it appears that K.S.A. 1987 Supp. 22-3717(a), as amended, applies, which states that an inmate is eligible for parole after serving the entire minimum sentence. That minimum sentence is 15 years for each life sentence.

In conclusion, it is our opinion that an inmate whose life sentence for a Class A felony is enhanced pursuant to the habitual criminal act is eligible for parole after serving 15 years for each life sentence ordered. To the extent that Attorney General Opinion No. 88-151 is in conflict, that opinion is withdrawn.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mark W. Stafford
Assistant Attorney General

RTS:JLM:MWS:bas