

## Opinion No. [29-99]

August 31, 1929

**TO:** Office of the Attorney General of New Mexico

REFORM SCHOOL -- Prisoners transferred to penitentiary to be given credit for good behavior on whole time of sentence.

### OPINION

Reference is made to your letter of the 22nd instant in which you ask for an opinion from this office as to your duty relative to prisoners who have been transferred to you from the Reform School, having been sentenced to such institution "until they arrive at the age of twenty-one years." You direct our attention particularly to a consideration of statutes providing for a deduction on account of good behavior and to the additional good time permitted convicts engaged in certain occupations.

As to a sentence calling for commitment until the convict shall have reached the age of twenty-one years and taking into consideration the case, *State vs. Davisson*, 28 N.M. 653, and also taking into consideration the various provisions as to a sentence which may be imposed on boys under the age of eighteen years, I am inclined to construe such sentence as a sentence which might be determined by computation, that is, the length of the time between the date of sentence and the date upon which the one convicted would reach the age of twenty-one years.

On examination of Sections 5070-5071-5074 and 5084 of the Codification of 1915, all of which are available for your examination and need not here be quoted, discloses that the first three mentioned having to do with deduction for good behavior, computing of term, and application of conduct allowance, were all approved February 22, 1889 and by their terms apply to persons imprisoned in the penitentiary. This is true as well of Section 5074, approved March 15, 1909 and Section 5084 providing for additional good time, approved March 15, 1913.

The act of February 13, 1903, appearing as Section 5107 in the Codification, provides that convicts of both sexes, if under the age of eighteen years and convicted of an offense less than a felony, punishable by imprisonment in the penitentiary for life, shall be committed to the Reform School instead of in the penitentiary. This section was repealed by Chapter 114 of the Session Laws of 1927, which provides that the New Mexico Reform School at Springer may also be designated and known as the New Mexico Industrial School and shall be used for the detention, reformation, and instruction of **boys** under eighteen years of age, who may be convicted of any offense less than murder or man-slaughter, or who may be adjudged to be juvenile delinquents. The statute further provides in Section 1 that,

"When any boy under eighteen years of age is convicted of any such offense or is adjudged to be a juvenile delinquent, the court may, if in its opinion the accused is a proper subject therefor, order him committed to said school until he shall attain the age of twenty-one years or until he shall be sooner paroled, released or removed by order of the court."

Section 4 of the same act is as follows:

"Sec. 4. Whenever any person committed to said school is found by said board to be an improper subject for reformation and instruction at said school and who, if allowed to remain would prevent or retard the reformation and instruction of the other boys at said school, and the board shall report such finding to the court having committed any such person and the court may with or without further investigation or hearing order such person to be removed from said school to the State Penitentiary and serve out the remainder of his sentence."

An attempt to analyze the several statutes relative to the sentencing, raised questions which are probably not the questions upon which you at this time ask an opinion. That is, your perplexity is as to what if any application is to be given in such cases to the statutes relative to credit for good behavior regularly and additional good time provided for in Section 5084.

In view of the fact that the statutes relative to the credit allowed for good behavior and additional good time were enacted prior to those providing for the imprisonment of offenders under the age of eighteen years in the Reform School or Industrial School, we are of the opinion that the later statutes were not intended to revoke or limit the application of the good time allowances to those committed to the penitentiary in the first instance, but should be given application to those who come to the penitentiary from the Industrial School as well and in the application of any good time allowance earned. Such application should be made upon the sentence with the same effect as if the convict had been from the beginning of his sentence in the penitentiary. That is, for example, a boy having served two years in the Industrial School and being thereafter transferred to the penitentiary, would be entitled to have good time earned applied as upon the third year of his imprisonment even though it is his first year in the penitentiary. This, it seems, would have special application to the provisions of Section 5070 of the Codification.

If we have misinterpreted your question, or if the opinion here expressed is not clear, kindly resubmit your question more specifically.