



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 2, 1962

Honorable Brandon Bickett
County Attorney
Blanco County Courthouse
Johnson City, Texas

Opinion No. WW-1326

Re: Authority of a sheriff to
grant one-third commutation
of time for good conduct to
a jail prisoner who is serv-
ing out his fine, and relat-
ed questions.

Dear Mr. Bickett:

In your letter you asked the following questions:

"Whether it is legal for the Sheriff in charge of a County Jail to grant one-third commutation of time for good conduct to an inmate or prisoner who is in jail serving out his fine in the same manner as he would grant such commutation of time to an inmate or prisoner who is in jail serving out his jail sentence.

"Also, in this connection, whether the Sheriff in charge has the sole discretionary power to grant such commutation of time, or must he be required to obtain permission or consent of the Judge of the Court in which the prisoner or inmate has been convicted.

"And, further, does the County Judge, or the Sheriff, have charge and control of the collection of a fine assessed by the Judge?"

Your opinion request further advises us that the prisoner in question was charged with the offense of "unlawfully hunting deer from an automobile," and after pleading guilty was assessed a fine and court costs. Being unable to pay his fine, he then served a portion of his fine in jail until being released by the Sheriff, purporting to act under Article 5118a, Vernon's Civil Statutes.

*Amended by act
1963 5th Leg.
P. 943 ch. 371, Sec 4ek
sentence of act 5118a
see C-144*

Article 5118a, V.C.S. reads as follows:

"In order to encourage county jail discipline a distinction may be made in the term of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts; the reward to be bestowed on such prisoners for good conduct shall consist of such relaxation of strict county jail rules, and extension of social privileges as may be consistent with proper discipline. Commutation of time for good conduct, industry and obedience may be granted the inmates of each county jail by the sheriff in charge. A deduction in time not to exceed one third ($1/3$) of the original sentence may be made from the term or terms of sentence when no charge of misconduct has been sustained against the prisoner. A prisoner under two (2) or more cumulative sentences shall be allowed commutation as if they were all one sentence. For such sustained charge of misconduct in violation of any rule known to the prisoner (including escape or attempt to escape) any part or all of the commutation which shall have accrued in favor of the prisoner to that date of said misconduct may be forfeited and taken away by the sheriff. No other time allowance or credits in addition to the commutation of time for good conduct herein provided for may be deducted from the term or terms of sentences."

Art. 785, C.C.P. reads:

"When the judgment against a defendant is for a fine and costs he shall be discharged from the same:

- "1. When the amount there has been fully paid.
- "2. When remitted by the proper authority.

- "3. When he has remained in custody for the time required by law to satisfy the amount thereof."

In the event the defendant, who has been assessed a fine and cost, refuses or is unable to pay the same, he may "lay out" such fine and costs at the rate of \$3.00 per day, until the fine and costs are satisfied. If, after entering the jail and serving one or more days, he is able to raise some money to apply on the fine and costs, he will receive credit on such fine and costs at the rate of \$3.00 for each day served, and is only required to pay the balance due in order to secure his release. Art. 793, C.C.P. The punishment assessed against such defendant never consisted of a term in the county jail. He is only there by reason of his failure to pay the fine and costs. His release may be secured at any time by payment of the balance due on the fine and costs, either by himself or paid for him by his friends or relatives. Since his punishment only consists of a fine and costs, to bring him within the provisions of Article 5118a, V.C.S., would be to permit the sheriff to remit a portion of a cash fine, which Art. 5118a does not purport to do. In answer to your first question, we hold that Article 5118a, V.C.S. has no application to a prisoner in the county jail whose sole punishment is a fine and costs, and who is "laying out" the same.

Attorney General's Opinion No. WW-918 states that under Article 5118a, V.C.S.:

" . . . the sheriff is given the discretion of giving a prisoner a deduction in time even though he has a record of good conduct. This simply means that where a prisoner has an unquestioned good conduct record, the sheriff is not under a duty to release him in less time than called for in the sentence. . . ."

The sheriff is the custodian of prisoners in the county jail. Art. 265, C.C.P. Art. 5118a, V.C.S. was enacted to assist the sheriff in maintaining proper discipline in the jail. We hold, therefore, in answer to your second question, that the sheriff has the sole discretion under Art. 5118a, V.C.S. in granting commutation of time of those prisoners in his custody serving jail terms in the county jail. The judge of the court in which the prisoner was convicted has no powers or authority under Art. 5118a, V.C.S.

Art. 1616, V.C.S. reads:

"An account shall be kept with the sheriff charging him with all judgments, fines, forfeitures and penalties, payable to and rendered in any court of the county, the collection of which he is by law made chargeable. The sheriff may free himself from liability from such charge, by:

"1. Producing the receipt of the county treasurer showing the payment of such judgment, fine forfeiture or penalty.

"2. Showing to the satisfaction of the commissioners court that the same cannot be collected, or that the same has been discharged by imprisonment or labor, or by escape, without his fault or neglect, and obtaining an order from said court allowing the same."

In Bradley v. State, 56 S.W. 114 (Civ.App., 1900, error refused), the Court permitted recovery from a former sheriff and his bondsmen for fines and costs assessed against defendants in the county court, which it was alleged that the sheriff had willfully neglected and refused to collect. The Court reviewed Articles 838 and 839, Revised Statutes of 1895 (now Article 1616, V.C.S.), and stated at page 116:

" . . . The county judge had no authority to direct the release of the parties without a discharge of the judgments against them in one of the modes provided by law. The power to remit fines is given by law to the governor alone. . . . These provisions of the Revised Statutes as well as of the Code of Criminal Procedure were enacted for the purpose of compelling the sheriff to do his duty in the collection of fines, and were made plain to meet just such cases as the present. . . ."

Attorney General's Opinion No. O-3262 (1941) states:

"You are respectfully advised that it is the opinion of this department

that you should ordinarily look to the sheriff or constable as the case may be for the collection of fines and costs in misdemeanor cases."

In answer to your third question, we hold that the sheriff is charged with the collection of fines assessed in the county court.

S U M M A R Y

Art. 5118a, V.C.S., which authorizes a sheriff to grant commutation of time to prisoners in the county jail for good conduct, has no application to a prisoner whose sole punishment consists of a fine and costs, and who is laying out the same in jail.

The sheriff has the sole discretion under Art. 5118a, V.C.S. in granting commutation of time of those prisoners in his custody serving jail terms in the county jail.

The sheriff is charged with the collection of fines assessed in county court.

Yours very truly,

WILL WILSON
Attorney General of Texas

By


Riley Eugene Fletcher
Assistant

REF/jp

APPROVED:

OPINION COMMITTEE:
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REVIEWED FOR THE ATTORNEY GENERAL
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