OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable O. J. S. Ellingson
General Manager
Texas Prison System
Huntsville, Texas

Dear Sir:

Opinion No. O-7222
Re: Under the facts given is a convict entitled to discharge money?

Your request, dated February 24, 1941, for an opinion from this department has been received and considered. We quote from your request:

"I enclose copies of this inmate's records under the above numbers which are self-explanatory.

"Please note under No. 37566 he began a 50 year sentence from Dallam County for Murder on April 9, 1915 and on April 30, 1931 he was granted a general parole by Governor Sterling, however, on April 9, 1932 he was returned to prison as a parole violator.

"On April 27, 1933 the Court of Criminal Appeals confirmed a life sentence against this inmate absorbing the unexpired portion of the 50 year sentence from Dallam County as No. 37566. On the life sentence he was given No. 73161.

"On December 9, 1940 this inmate completed the 50 year sentence from Dallam County. It is our understanding the governor has signed a proclamation granting this inmate a Conditional Pardon under his life sentence No. 73161 and when he is released on this Conditional Pardon, he will be given the prescribed clothing, $5.00 in Cash and a non-cashable transportation ticket

to the County of Conviction, however, as Mackley has finished the 50 year sentence mentioned above, he thinks he is due discharge money on the 50 year sentence in addition to what he will receive when he is released on the Conditional Pardon.

"We do not see how he could be due any discharge money until he is actually discharged from prison, however, we are not sure. We would like to have your opinion as to whether he is entitled to discharge money for serving the 50 year sentence while still serving his life sentence."

We have carefully considered your request and are of the opinion that the question presented by you is moot for the reason that in calculating the time served by the convict, Mackley, under No. 37566, the fifty year sentence, according to Conference Opinion No. 3010, written by H. L. Williford, on December 9, 1937, to Honorable Bruce W. Bryant, Chairman of Board of Pardons and Paroles, he is not entitled to be discharged for having served said fifty year sentence. According to the certificates you have enclosed with your request, Mackley has actually served twenty-four years, two months and twenty days in prison on his fifty year sentence as of December 9, 1940. Under the opinion referred to above, he would be entitled to a maximum of nine years, four months and eight days as commutation time for having served his actual time of twenty-four years, two months and twenty days. By adding the actual and commutation time to the nine years, two months and nine days over time as shown on your certificate, it is shown that the time actually served by the prisoner, Mackley, under No. 37566, is forty-two years, nine months and seven days. This leaves a total of seven years, two months and twenty-three days still to be served by the prisoner on his fifty year sentence as of December 9, 1940.

Therefore, it is our opinion and you are so advised that Mackley is not entitled to be discharged for having served his fifty year sentence. Neither is it shown that he has been given a full pardon for said offense thereby entitling him to be discharged in that manner. Since he is not entitled to be discharged under either of the above conditions, it is our opinion he is not entitled to the discharge money provided for in Article 6166al, Revised Civil Statutes, 1925. See Opinion

No. O-1850, a copy of which is enclosed for your assistance.

We trust we have fully answered your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By Harold McCracken

Harold McCracken
Assistant

HM:RS

APPROVED MAR 19, 1941

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED
OPINION
COMMITTEE
BY Blair
CHAIRMAN