



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

October 24, 1958

Mr. O. B. Ellis, Director
Texas Department of Corrections
Huntsville, Texas

Opinion No. WW-518

Re: Computation of time to be
credited on the term of a
prisoner while he is con-
fined in a State mental
hospital.

Dear Mr. Ellis:

Your request for an opinion concerns the question of whether the provisions of House Bill 906, 55th Legislature, Regular Session, 1957, which repeals all existing statutes and makes provisions for prisoners to receive credit for time while in mental institutions, be retroactive in the case of a prisoner who was in Rusk State Mental Hospital at the time the Bill was passed.

Section 17 of House Bill 906, 55th Legislature, Regular Session, 1957, chapter 486, at page 1416, also Article 932b of Vernon's Annotated Code of Criminal Procedure, provides:

"The time a prisoner is confined in a State mental hospital for treatment shall be considered time served and shall be credited to the term of his sentence, but he shall not be entitled to any commutation of sentence for good conduct while he is under treatment in a mental hospital."

The effective date of this statute was January 1, 1958.

In our Opinion No. O-5721, addressed to the Texas Prison System, Bureau of Records and Identification, Huntsville, Texas, we passed upon the question whether inmates of the Texas Prison System who may at various times be adjudged insane and committed to State institutions for the insane are entitled to the benefits of the commutation of time as prescribed by law.

In answering that question, we said:

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"We are of the opinion that the foregoing discussion discloses a legislative policy in Texas of not subjecting insane persons to criminal punishment and that the time spent by an insane in a state hospital should not be counted on his sentence as a criminal."

This opinion was based primarily on the following authorities:

Article 2 of the Penal Code provides:

"The object of punishment is to suppress crime and reform the offender."

Article 34 of the Penal Code in part reads:

" . . . No person who becomes insane after he is found guilty shall be punished while in such condition."

Articles 925 and 928 of Vernon's Code of Criminal Procedure respectively provide:

"Upon the trial of an issue of insanity, if the defendant is found to be insane, all further proceedings in the case against him shall be suspended until he becomes sane."

"If the defendant becomes sane, he shall be brought before the court in which he was convicted or before the District Court in the County in which the defendant is located at the time he is alleged to have become sane; and, a jury shall be impaneled in the Court before which such defendant is brought to try the issue of his sanity; and, if he is found to be sane, the conviction shall be enforced against him as if the proceedings had never been suspended."

Also see Article 6184 L, Vernon's Civil Statutes, which provides for allowing convicts overtime for good conduct.

Section 16 of Article I of the Texas Constitution provides:

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"No bill of attainder, ex post facto law, retroactive law or any law impairing the obligation of contracts shall be made." (Emphasis added.)

In 39 Texas Jurisprudence, page 54, we find the following language:

" . . . A statute will not be applied or construed retrospectively or given retroactive operation, so as to affect existing rights or create new obligations and impose new duties as to past transactions, unless it clearly appears, from its terms or at least by fair implication, that the Legislature so intended. On the contrary, a statute is generally held to operate prospectively unless a contrary construction is required by the terms or the nature and object of the law. It is always presumed that a statute, not relating merely to remedies and modes of procedure, is intended to operate prospectively, and all doubts are resolved in favor of such construction." (Citing City of Ft. Worth v. Morrow, 284 S.W. 275.)

It is our opinion after examining House Bill 906, 55th Legislature, Regular Session, 1957, that the Legislature did not intend either clearly or by fair implication to make this statute retroactive in operation. Even if the statute is retroactive in operation the retroactive part would be void because violative of the Texas Constitution, Article IV, Section 11, which places all matters of clemency, reprieves, commutations and pardons, in the Governor. (See Ex Parte Anderson, 192 S.W. 2nd 289; Gilderbloom v. State, 272 S.W. 2nd 106.) It is our opinion that the time spend by prisoners who were in a state mental hospital prior to January 1, 1958, does not come under Section 17 of House Bill 906, 55th Legislature, Regular Session, 1957; that the time spent by prisoners after January 1, 1958, in such state mental hospitals would come under Section 17 of House Bill 906, 55th Legislature, Regular Session, 1957.

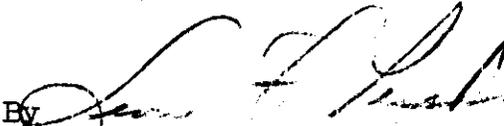
Mr. O. B. Ellis, page 4. (WW-518)

SUMMARY

Section 17 of House Bill 906, 55th Legislature, Regular Session, 1957, is not a retroactive statute which would give prisoners credit for time spent while under treatment in a state mental hospital prior to January 1, 1958.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 

Leon F. Pesek
Assistant

LEP:mfh

APPROVED:

OPINION COMMITTEE
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REVIEWED FOR THE ATTORNEY GENERAL
BY: W. V. Geppert