



# Attorney General

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Robert K. Corbin

June 1, 1987

Mr. Richard Ortiz  
Arizona Board of Pardons and Paroles  
1645 West Jefferson, Suite 326  
Phoenix, Arizona 85007

Re: I87-080 (R86-122)

Dear Mr. Ortiz:

You have asked:

1. May the Arizona Board of Pardons and Paroles ("Board") restore, to an inmate, credit for time spent on parole which has previously been forfeited pursuant to A.R.S. § 31-417(A)?
2. If A.R.S. § 31-417(A) does not grant the authority to the Board to restore "street time" may the Board provide for such authority through its rule making authority?
3. Does any other authority exist which would grant the Board the power to restore "street time"?

A.R.S. § 31-417 provides in pertinent part: "[the parole violator] may be . . . imprisoned in the prison for a period equal to his unexpired term of sentence at the time parole was granted, unless sooner released or discharged." The Arizona Supreme Court held in Baker v. Arizona Board of Pardons and Paroles, 150 Ariz. 414, 724 P.2d 33 (1986) that this language gave the Board authority to forfeit "street time" when a prisoner's parole is revoked. The statute, however, does not address whether the Board may at a later date restore "street time" after it has been forfeited. This is in marked contrast to A.R.S. § 41-1604.07(C), which grants the Director of the

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Department of Corrections the authority to forfeit release credits earned by a prisoner and also expressly provides that he may, in his discretion, later restore them. The power of the Board is designated by statute. In State v. Superior Court, 30 Ariz. 332, 340-341, 246 P. 1033, 1036 (1926) the Arizona Supreme Court stated:

It is for the legislature to say when the power of paroling prisoners may be exercised, and it is the duty of the courts and those ministerial officers charged with executing their mandates to follow the law as it is written, and not as they think it should be written. When the legislature, if it ever does, rewrites the law or amends it, empowering the board of pardons and paroles to release prisoners at their discretion, it will be time enough for them to exercise that power.

If the legislature had intended to grant the authority to restore credit for the time spent on parole which has been forfeited it would have provided so in the manner that it granted similar authority to the Director of the Department of Corrections in A.R.S. § 41-1604.07(C). The legislature has conferred upon the Board the discretion to determine whether or not a prisoner's parole should be revoked and if so what portion of the remaining sentence he must serve. A proper delegation of such authority to an administrative board must be defined with sufficient clarity to enable the Board to know its legal bounds. Hernandez v. Frohmiller, 68 Ariz. 242, 204 P.2d 854 (1949).

A.R.S. § 31-417(A) is sufficiently clear to guide the Board in exercising its discretion to forfeit time spent on parole. That statute defines precisely under what circumstances and how much "street time" may be taken. The legislature does not provide any similar standard or guide which could be used to guide the Board in restoring time which has been forfeited. Therefore, A.R.S. § 31-417(A) may not be construed as granting to the Board the authority to restore "street time" which has been forfeited upon revocation.

A.A.C. R5-4-703(B)(2) of the Rules and Regulations governing the Board provides:

The Board has the authority to restore street time to individuals serving under this code.

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Although the Board has been given the power, under A.R.S. § 31-401(F), to make rules and regulations as it deems proper for the conduct of its business, no agency may give itself powers which have not been expressly granted it by legislation. Corella v. Superior Court Arizona In and For Pima County, 144 Ariz. 418, 420, 698 P.2d 213, 215 (App. 1985). The legislature has not granted the Board the power to restore forfeited "street time," therefore any rule of the Board purporting to give that authority is of no effect, and A.A.C. R5-4-703(B)(2) is invalid. We have found no other authority which could be construed as granting the Arizona Board of Pardons and Paroles the power to restore forfeited "street time." Time spent on parole once forfeited in connection with a parole revocation may not be restored.

Sincerely,



BOB CORBIN  
Attorney General

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