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OPINION	:	No. 79-1016
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of	:	<u>January 11, 1980</u>
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SUBJECT: PRISONER “WORK TIME” CREDITS—Prisoners are entitled to “work time” credits on their sentences for their work performed for a private employer under a work furlough program

The Honorable Gene L. Tunney, District Attorney of the County of Sonoma has requested an opinion on the following question:

Is a prisoner entitled to “work time” credits on his or her sentence under Penal Code section 4019(b) for work performed for a private employer under a work furlough program sanctioned by section 1208 of that code?

CONCLUSION

Prisoners are entitled to “work time” credits on their sentences for their work performed for a private employer under a work furlough program.

ANALYSIS

Question has arisen as to whether inmates employed by and working for private employers through the Sonoma County Work Furlough Program sanctioned by section 1208 of the Penal Code, are entitled to “work time” credits pursuant to section 4019(b) of that code. We conclude they are.

Section 4019(b) of the California Penal Code¹ provides in pertinent part that:

“ . . . for each six day period in which a prisoner is committed to [a county jail, industrial farm or road camp, or any city jail, industrial farm, or road camp], one day shall be deducted from his period of confinement unless it appears by the record that the prisoner has refused to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

In 1957 the Legislature enacted what is now known as the County Work Furlough Rehabilitation Law (Stats. 1957, ch. 1580, p. 2932), adding section 1208 to the Penal Code. In its present form it authorizes the board of supervisors of a county to establish a program for the employment of prisoners outside county jails, under the aegis of a work furlough administrator who may be “the sheriff, the probation officer, the director of the county department of corrections, or the superintendent of a county industrial farm or industrial road camp.” (§ 1208(a).) The employment so contemplated clearly may be for a private employer since subdivision (b) of section 1208 speaks of a prisoner’s being permitted to continue his regular employment, which may have been in the private sector.

The question asked is whether a prisoner performing work pursuant to such a ‘work furlough program’ for a private employer is entitled to section 4019(b) credits against his or her sentence. The answer must be affirmative because subsection (f) of section 1208 states in clearest terms that a prisoner participating in the program “shall be eligible” for time credits pursuant to section 4019.

Question has nevertheless arisen, presumably because section 4019 (b) on its face does not provide for its application to the work furlough situation of private employment. It provides for the reduction of the sentence of a prisoner for not refusing to satisfactorily perform labor as assigned by the sheriff, chief of police, or superintendent of an industrial farm or road camp.

That the labor in a work furlough situation is performed outside the facility itself is

¹ All statutory references herein are to the California Penal Code unless otherwise stated.

of no consequence, that assigned on public works by the sheriff, chief of police, or superintendent of an industrial farm or road camp often is as well, and It ‘was not intended that prisoners while at labor be in the immediate custody of the sheriff.” (*Hicks v. Folks* (1893,) 97 Cal. 241, 243.) Furthermore, in the work furlough situation sanction by section 1208, the prisoner is “as much in the sheriff’s custody when he leaves the jail for such purpose as when he is confined within its limits.” (*People v. Haskins* (1960) 177 Cal. App. 2d 84, 87.) The question would be whether labor for a private employer under the program, is assigned by the sheriff, chief of police or superintendent of an industrial farm or road camp, as that term is used in the statute.

Section 4 of the code states that its provisions are to be interpreted according to the fair import of their terms with a view to effect their object and promote justice. The purpose of the credit formulae of section 4019 is to offer persons held in institutions “greater incentive to conform to the standards of society” (27 Ops. Cal. Atty. Gen. 104, 107 (1956)), and that of subsection (b)’s work credits, the maintenance or installation of a work ethic.² The type of prisoner suitable for the work furlough program is very likely the one most likely to be rehabilitated and whose “successful return to the community” (§ 1208, subd. (d)) is more readily accomplished. Disruption of previous regular employment or failure to teach suitable skills in employment would be disruptive of this end. Furthermore, as has been suggested, to grant work credits for labor performed in the private sector by a prisoner in the work furlough program promotes the goals of rehabilitation. To deny the prisoner the benefit of earning credits tends to lessen his or her motivation to perform well on the job, rather than encouraging the individual by providing the additional incentive of a reduction in one’s sentence. Granting work credits acknowledges the individual’s efforts to conform their behavior to acceptable, work-performance standards found in the private working community.

We therefore must construe section 4019(b) to achieve its purpose. We must also construe it to harmonize with the entire statutory scheme of which it is a part. (*Bozung v. Local Agency Foundation Com.* (1975)13 Cal. 3d 263, 274 fn. 7; *Miller v. Superior Court* (1979) 92 Cal. App. 3d 29, 31.)

Section 1208 which authorizes the work furlough program as an integral part of the statutory penal scheme leading to rehabilitation of prisoners and their subsequent reentry into society. That section vests focal administrative authority in the work furlough

² Cf. section 4100 which states the purpose of the Article on County Industrial Farms (Pen. Code, pt. 3, title 4, art. 1, §§ 4100-4137) is “to make possible the substitution of constructive labor for profitless prison confinement in order that those who are charged with or convicted of public offenses and deprived of their liberty may become better citizens because of their disciplinary experience.”

administrator and his agents. He deems the prisoner for the program initially and directs that he/she be permitted to be employed (§ 1208, subd. (b)); he arranges for the already suitable employment (*id.*, subd.(c)); and he can demand that the prisoner's salary from employment in the program, be paid directly to him for keeping, with appropriate disbursements, until the prisoner's discharge. (*Id.*, subd. (e).)

We are not unaware of article XIV, section 5 of the California Constitution which provides:

“The labor of convicts *shall not be let out by contract* to any person, copartnership, company or corporation, and the Legislature, shall by law, provide for the working of convicts for the benefit of the State.”

In *Pitts v. Reagan* (1971) 14 Cal. App. 3d 112, it was held that this provision (then of art. 10, § 1 of the Constitution), meant “that the state may not let out [i.e., allow to be used, hire out, or permit] convict labor by contract to private employers regardless of whether the state or the convicts or both receive the attendant consideration.’ (14 Cal. App. 3d at p. 118 (emphasis added).) In that case the labor was arranged pursuant to contact between the employer and the state, not with the prisoner (*Id.*, at p. 116), and after reviewing the proceedings of the California Constitutional Convention of 1878–1879, the court felt the “rather strong probability, that the delegates, or at least the majority, were concerned with the abolition of contracted convict labor generally . . .” (*Id.*, at pp. 118–119.)

In the work furlough situation, there is no “contract labor” by the state and the state is not providing the labor by contract with the employer. Although the work furlough administrator does have a crucial role in the program, he does not contract with the employer 14 Cal. App. 3d at p. 117.) That is the situation attending the work furlough sanctioned by section 1208, and we find no constitutional impediment thereto.

Accordingly we conclude that prisoners are entitled to work time credits on their sentences under Penal Code section 4019(b) for work they satisfactorily perform for a private employer under a work furlough program sanctioned by section 1208 of that code.
