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lending criteria for home financing have a disproportionate impact on certain neighborhoods and those lending criteria have not been proven by the lending institution at a hearing held by the Commissioner to be supported by a reasonable analysis of the risks associated with the applicants for given loans or the condition of the properties used to secure those loans.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: MARK S. RATTNER
Deputy Attorney General

April 23, 1979

WILLIAM H. FAUVER, *Commissioner*
Department of Corrections
Whittlesey Road
Trenton, New Jersey 08628

FORMAL OPINION NO. 8—1979

Dear Commissioner Fauver:

You have requested our opinion as to whether it is within the authority of a chief executive officer of a state correctional institution to restore commutation credits to an inmate when those credits have been previously forfeited by the inmate as a result of his flagrant misconduct. For the following reasons you are advised that, in the discretion of the chief executive officer, such commutation credits may be restored to the inmate.

N.J.S.A. 30:4-140 governs the allowance of commutation credits to inmates in state correctional institutions. This statute provides in pertinent part:

For every year or fractional part of a year of sentence imposed upon any person committed to any State correctional institution for a minimum-maximum term there shall be remitted to him from both the maximum and minimum term of his sentence, for continuous orderly deportment, the progressive time credits indicated in the schedule herein. When a sentence contains a fractional part of a year in either the minimum or maximum thereof, then time credits in reduction of such fractional part of a year shall be calculated at the rate set out in the schedule for each full month of such fractional part of a year of sentence. No time credits shall be calculated as provided for herein on time served by any person in custody between his arrest and the imposition of sentence. In case of any flagrant misconduct the

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board of managers may declare a forfeiture of the time previously remitted, either in whole or in part, as to them shall seem just.*

It is clear from this statutory language that, although an inmate has an entitlement to commutation credits, the chief executive officer may declare a forfeiture of all or part of those credits in appropriate cases.

Although the statute does not in express terms authorize the restoration of forfeited commutation credits, the underlying statutory scheme for institutional discipline of inmates in state correctional institutions provides implicit support for that practice. The Department of Corrections is responsible for providing for the custody, care and discipline of those persons committed to state correctional institutions, N.J.S.A. 30:1B-3. In particular, the commissioner and the chief executive officer of such institution possess inherent authority for the maintenance of prison discipline as well as for the establishment of procedures to effectuate that responsibility. *Avant v. Clifford*, 67 N.J. 496, 549 (1975); N.J.S.A. 30:4-4. *See also*, N.J.S.A. 30:1B-6(g). Since the appropriate management of a penal institution requires the discipline of its inmates, the cases have recognized that prison officials possess wide and pervasive discretion in the treatment of inmates in matters of internal prison management and discipline. *See McCloskey v. State of Maryland*, 337 F.2d 72, 74 (4th Cir. 1964); *Gahagan v. Pennsylvania Bd. of Probation and Parole*, 444 F.Supp. 1326 (E.D. Penn. 1978); *Urbano v. McCorkle*, 334 F.Supp. 161, 167 (D. N.J. 1971) supplemented by 346 F.Supp. 51 (D. N.J. 1972) *aff'd* 481 F.2d 1400 (3rd Cir. 1973); *Davis v. United States*, 316 F.Supp. 80, 82 (E.D. Mo. 1970) *aff'd* 439 F.2d 1118 (8th Cir. 1971); *Avant v. Clifford, supra*, at pp. 563-564 (Conford, J. concurring).

In view of the broad statutory framework conferring authority for the discipline of inmates, we cannot assume that it can be the legislative purpose, in the absence of an express indication to the contrary, that a restoration of commutation credits is foreclosed. Implicit in the authority to declare a forfeiture of credits is the discretion to revoke such a forfeiture. Furthermore, an administrative agency has been held to have the inherent authority to reopen and modify its determinations. *Burlington County Evergreen Park Mental Hospital v. Cooper*, 56 N.J. 579, 600 (1970); *Mount v. Trustees of Public Emp. Retirement System of New Jersey*, 133 N.J. Super. 72, 82 (App. Div 1975). Additionally, a statute should be construed with regard to its purpose and consistent with related statutes in the area. *Appeal of N.Y. State Realty & Terminal Co.*, 21 N.J. 90, 98 (1956); *Apartment Management Co. v. Tp. Comm. of Union Tp.*, 140 N.J. Super.

* N.J.S.A. 30:4-4a provides in pertinent part:

Whenever in any law, rule, regulation, contract, document, judicial or administrative proceeding or otherwise, reference is made to the board of managers of any institution, the same shall mean and refer to the chief executive officer of the institution. . . .

Thus, pursuant to this statute, the authority to declare the forfeiture of commutation time credits resides in the chief executive officer of the correctional institution in which the inmate is incarcerated.

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220, 224 (App. Div. 1976); *N.J. Prop.-Liab. Ins. Guar. Co. v. Sheeran*, 137 N.J. Super. 345, 351 (App. Div. 1975) *certif. den.* 70 N.J. 143 (1976). Thus, since the authority conferred on prison officials to declare a forfeiture of commutation credits is an aspect of their ability to maintain prison discipline, we can reasonably assume that the legislature intended to confer concomitant authority on those prison authorities to restore commutation credits in those cases where the interests of prison management and discipline are similarly served.

In conclusion, it is our opinion that the existing administrative practice permitting the restoration of commutation credits previously forfeited under N.J.S.A. 30:4-140 is within the authority of prison officials where the same is implemented in a manner that is neither arbitrary nor capricious and is consistent with the best interests of the inmates and prison management and discipline.

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: EUGENE M. SCHWARTZ
Deputy Attorney General

May 4, 1979

SIDNEY GLASER, *Director*
Division of Taxation
Taxation Building
West State & Willow Streets
Trenton, New Jersey 08625

FORMAL OPINION NO. 9—1979

Dear Director Glaser:

You have asked for our opinion as to whether temporary disability benefits received by an employee from either the "State Plan"¹ or a "private plan"² established pursuant to the Temporary Disability Benefit Law, are excludable from gross income under the New Jersey Gross Income Tax Act. For the reasons set forth below, you are advised that such benefits are excludable from gross income.³

N.J.S.A. 54A:2-1 provides in pertinent part that:

There is hereby imposed a tax for each taxable year . . . on the New Jersey gross income as herein defined of every individual . . . , subject to the deduction, limitations and modifications hereinafter provided. . . .

"Gross income" is defined in N.J.S.A. 54A:5-1:

New Jersey gross income shall consist of the following categories of income: