

FORMAL OPINION

more at the time of a senior citizen spouse's death. The constitutional provision does not provide authorization to grant a senior citizen homestead rebate to a surviving spouse who attains age 55 after the death of the eligible senior citizen spouse.*

Very truly yours,
JOHN J. DEGNAN
Attorney General

By: JOSEPH C. SMALL
Deputy Attorney General

* In any event, the constitutional amendment in Art. VIII, Sec. 1 para. 5, is permissive in character and authorizes the legislature to enact in its discretion a homestead rebate law which may include rebates to residents who are "55 years of age or more and the surviving spouse." It is clear that pursuant to this constitutional authorization, the legislature could enact a statute which was more restrictive than the constitutional provision. Therefore, a legislative determination to limit the rebate to only that class of surviving spouse who is at least 55 at the time of the death, of his or her spouse would be consistent with the constitutional amendment even if it could be read to permit the legislature to extend the benefit to surviving spouses who were under that age at the time of their spouse's death.

October 23, 1979

WILLIAM H. FAUVER, *Commissioner*
Department of Corrections
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FORMAL OPINION NO. 25—1979

Dear Commissioner Fauver:

In *Formal Opinion No. 21-1979*, dated October 9, 1979, it was concluded that the forfeiture of credit for time served on parole (street time) on the reimprisonment of an offender upon revocation of his parole is prohibited by the Code of Criminal Justice. As a result of that opinion, you have asked whether a parolee should continue to receive credit toward his sentence for a period of time during which he has absconded from and avoided parole supervision. For the following reasons, it is our opinion that credit for time served on parole may not be claimed for a period of time during which a parolee has unlawfully absconded and absented himself from parole supervision.

N.J.S.A. 2C:43-9(b) provides:

If an offender is recommitted upon revocation of his parole, the term of further imprisonment upon such recommitment and of

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any subsequent reparole or recommitment under the same sentence shall be fixed by the parole board *but shall not exceed the original sentence* determined from the date of conviction. [Emphasis added.]

Although the statutory language provides that the term of further imprisonment upon revocation of parole should not exceed the original sentence, it is well established that a "mere lapse of time without imprisonment or other restraint contemplated by the law does not constitute service of a sentence." *Anderson v. Corall*, 263 U.S. 193, 196, 44 S.Ct. 43, 68 L.Ed. 247 (1923). A parolee remains in the constructive custody of the superintendent of the institution from which he was paroled and under the immediate supervision of the State Parole Board. N.J.S.A. 30:4-123.15; *Anderson, supra*. Therefore, time served on parole would constitute the service of a sentence. *Anderson, supra*; *Zerbst v. Kidwell*, 304 U.S. 359, 58 S.Ct. 872, 82 L.Ed. 399 (1938). On the other hand, an unlawful absence from such custody and supervision would not constitute the service of a sentence. Rather, such an occurrence may be compared to an escape of a prisoner or to the reincarceration of a parolee for a subsequent offense. In either event, the running of the original sentence would clearly be tolled. *Anderson, supra*; *Zerbst, supra*; *Shaw v. Hatrak*, 164 N.J. Super. 414, 418, 419 (App.Div. 1978). Consequently, an administrative extension of a maximum expiration date of a sentence on the recommitment of a parolee to coincide with the period of time during which the parolee has unlawfully absented himself, would not increase the original sentence in contravention of N.J.S.A. 2C:43-9(b).

This conclusion is supported by principles of statutory construction. It is clear that legislation should not be interpreted in a manner to reach unreasonable or absurd results. *State v. Gill*, 47 N.J. 441, 444 (1966). Were an absconder to be given credit for a period of time during which he was not under parole supervision, he could avoid recommitment at all if he avoided recapture until his maximum sentence had expired.¹ The Legislature certainly cannot be assumed to have intended such an absurd result. Another principle of statutory construction is that primary regard must be given to the fundamental purpose for which the legislation was enacted and the spirit of the law will control over a literal reading of its terms. *N.J. Builders, Owners and Managers Assn. v. Blair*, 60 N.J. 330, 338 (1970). The overall legislative objective to insure the public safety by preventing the commission of offenses through the deterrent influence of sentences and the confinement of offenders would be frustrated if a parolee were to be given credit toward his sentence for a period of time during which he has absconded from and avoided parole supervision. N.J.S.A. 2C:1-2(b)(3).

This conclusion draws further support from a review of the legislative history of the statute.² The N.J. Criminal Law Revision Commission in

1. An absconder from parole supervision may not be charged with escape under the new Code. N.J.S.A. 2C:29-5(a).

2. N.J.S.A. 2C:43-9(c), recommended by the Commission, was substantially identical to N.J.S.A. 2C:43-9(b), which was ultimately enacted.

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providing recommendations to the Legislature perceived the extension of a maximum expiration date of a sentence for a minor violation of parole to be unjustifiably harsh. Vol. II, *Final Report of the New Jersey Criminal Law Revision Commission*, p. 322. The Commission stated that under the terms of its proposed revision:

[T]ime served successfully upon parole prior to revocation serves to reduce the parole term and the maximum sentence despite a later revocation; the offender is not required to 'back up' and serve again in prison any time that he has served upon parole. [*Final Report* at 322.]³ [Emphasis supplied.]

Thus, although it was the objective of the Commission to eliminate the dual effect of both a recommitment of a parolee and the forfeiture of credit for time served successfully on parole, it is readily apparent that it was not its purpose to provide credit on parole for the time during which a parolee has avoided parole supervision. The Commission could not have contemplated the period during which a parolee remained unlawfully absent from parole supervision as being "time served successfully on parole." The Legislature enacted N.J.S.A. 2C:43-9(b) as recommended by the Criminal Law Revision Commission and it may be presumed that it was conversant with and accepted the Commission's recommendations as its own.

For these reasons, it is our opinion that a parolee, on revocation of parole, may not receive credit on a sentence for a period of time during which he has unlawfully absconded and absented himself from parole supervision. Therefore, the maximum expiration date of the original sentence may be administratively extended upon revocation of parole for a period of time equal to the time during which a parolee has unlawfully absented himself from parole supervision.

Very truly yours,
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3. The Commission noted that where the revocation was based upon the commission of a crime while on parole, a separate sentence could additionally be imposed upon conviction for the crime.