

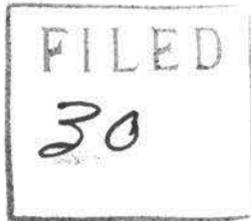
PAROLE: (1) Section 195.220, S.C.S.H.C.S.H.B.  
NARCOTICS: No. 69, 76th General Assembly (RSMo  
CRIMINAL LAW: Supp. 1971, 195.221), as it concerns  
CRIMINAL PROCEDURE: the granting of parole from a state  
CONTROLLED SUBSTANCE: correctional institution of anyone  
who is convicted of selling, giving,

or delivering a controlled substance as defined by newly enacted Chapter 195, affects only those persons sentenced pursuant to such chapter after the effective date of its passage. (2) Such section does not affect the administrative function of the Department of Corrections in reference to Section 216.355(1), RSMo. (3) An individual under supervision of the Board of Probation and Parole who was sentenced to the State Department of Corrections for selling, giving, or delivering a controlled substance pursuant to Chapter 195 is not to be given credit for parole time as time toward service of his sentence for application of the three-fourths rule, Section 216.355(1), RSMo 1969.

OPINION NO. 30

January 7, 1972

Mr. Walter G. Sartorius, Chairman  
Board of Probation and Parole  
P. O. Box 267  
Jefferson City, Missouri 65101



Dear Mr. Sartorius:

This is in reply to your request for an opinion of this office concerning the applicability of the recently enacted Section 195.220, S.C.S.H.C.S.H.B. No. 69, 76th General Assembly (RSMo Supp. 1971, 195.221), to two questions you pose. Those questions are: (1) Do the provisions of Section 195.220 apply to individuals sentenced after the effective date of Chapter 195, or do the provisions of Section 195.220 apply to those convicts now incarcerated in the Missouri Department of Corrections and eligible for parole, or those on parole? (2) Your second question asks whether Section 195.220 affects the operation of Section 216.355(1), RSMo 1969, which section is referred to as the three-fourths law.

Our research leads us to conclude that: (1) Section 195.220, as it concerns the granting of parole from a state correctional institution of anyone who is convicted of selling, giving, or delivering a controlled substance as defined by Chapter 195, affects only those persons sentenced pursuant to newly enacted Chapter 195 after the effective date of its passage; (2) Section 195.220, does not affect the administrative function of the Department of Corrections in reference to Section 216.355(1).

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I

Consideration should be given to the newly enacted Section 195.220, said section reading:

"Notwithstanding Section 549.275 RSMo, if the board of probation and parole releases any person from a state penal institution who was convicted of selling, giving, or delivering a controlled substance as defined in this chapter, the period of parole shall be for not less than the completion of the original sentence plus five years. If, however, he is found to have violated the conditions of his parole, he shall be recommitted to confinement by the department of corrections for the remainder of the term set by the original sentence from which he was paroled." [emphasis added]

Our reading of Section 195.220 and a contemporaneous reading of the Controlled Substances Act compels the conclusion that the legislative intent was not that the parole provisions of Section 195.220 be applied retroactively. Quite clearly, as can be seen by the underlined portions of the set out section, only a person who is released on parole or probation from a state correctional institution who was convicted of selling, giving, or delivering a controlled substance under the newly enacted Chapter 195, is controlled by the provisions of Section 195.220. Thus, it is our conclusion that Section 195.220 applies only to those persons convicted of selling, giving, or delivering a controlled substance under the newly enacted Chapter 195 from and after the effective date of such newly enacted chapter.

II

Your second question concerns the application of Section 216.355(1), RSMo, the three-fourths rule. We note, the Board of Probation and Parole is without administrative discretion involving the application of Section 216.355(1), as exclusive authority resides with the Department of Corrections. In *Ex parte Rody* (Mo.Sup. en banc 1941) 152 S.W.2d 657, the court stated, in reference to the three-fourths law:

". . . the conditions of the three-fourths rule enacted by Sec. 9086, supra [now Section 216.355], must be read into every judgment of conviction. They offer a reward in the form of diminished incarceration to every convict for obedience to the rules of the prison and laws of the same.

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"But the enforcement of these rules and laws, so far as they affect the reward, is administrative, not judicial. Sec. 9086, itself, required breaches thereof to be recorded on the prison records. Sec. 8985, supra, requires the Commission of the Department of Penal Institutions to make and enforce such by-laws, rules and regulations as they deem necessary. . . ." [loc. cit. 660; emphasis the Court's]

Clearly, from the court's discussion in Rody, and in Ex parte Carney (Mo.Sup. en banc 1938) 122 S.W.2d 888 and Ex parte England (Mo.Sup. en banc 1938) 122 S.W.2d 890, the application of Section 216.355, RSMo, is an exercise of administrative decision to be made by the Department of Corrections of the State of Missouri after review of a convict's conduct record while confined in the Department of Corrections. As the court indicates in Rody, an inmate does not automatically upon being confined to the Department of Corrections receive the benefits of the three-fourths rule. See Opinion of the Attorney General No. 37, Hamilton, 12-19-55 [copy enclosed].

The court discussed the purposes of the three-fourths rule in Hunter v. Hunter (Mo.Sup. Div. 1, 1951) 237 S.W.2d 100 where the court states:

"The three-fourths rule itself is based upon, and its application arises out of, the prisoner's conduct after confinement under and in execution of a sentence. While application of the rule may result in reduction in the sentence, neither the rule's existence nor its application changes the original sentence under which the convict was confined. . . ." [loc. cit. 103; emphasis the Court's]

It is our conclusion that Section 216.355(1), supra, is not affected by Section 195.220. It should be noted that in a prior opinion request dealing with Section 195.220, Opinion No. 388, Sartorius, 11-8-71, this office has ruled that Section 195.220 operates so that an individual under supervision of the Board of Probation and Parole who was sentenced to the State Department of Corrections for selling, giving, or delivering a controlled substance is not to be given credit for parole time as time for his service of his term of imprisonment pursuant to Section 549.275(1), RSMo; and on the basis of our discussion therein, we conclude that an individual under supervision of the Board of Probation and Parole who was sentenced to the State Department of Corrections for selling, giving, or delivering a controlled substance pursuant to Chapter

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195 is not to be given credit for parole time as time toward service of his sentence for application of the three-fourths rule, Section 216.355(1). In essence the granting of the statutory grace time of Section 216.355(1) resides in the Department of Corrections with the appropriate controlling legal criteria, and Section 216.355(1) is not applicable to a person paroled or on probation pursuant to Section 195.220. In this regard, we have considered Opinion of the Attorney General No. 60, Means, 9-26-57 [copy enclosed] which held that time served on parole counted toward time on service of sentence for purposes of the three-fourths law and hold this opinion inapplicable to an individual under supervision of the Board of Probation and Parole pursuant to Section 195.220 who was sentenced to the State Department of Corrections for selling, giving, or delivering a controlled substance. See Opinion of the Attorney General No. 388, Sartorius, 11-8-71.

#### CONCLUSION

It is, therefore, the opinion of this office that:

(1) Section 195.220, S.C.S.H.C.S.H.B. No. 69, 76th General Assembly (RSMo Supp. 1971, 195.221), as it concerns the granting of parole from a state correctional institution of anyone who is convicted of selling, giving, or delivering a controlled substance as defined by newly enacted Chapter 195, affects only those persons sentenced pursuant to such chapter after the effective date of its passage.

(2) Such section does not affect the administrative function of the Department of Corrections in reference to Section 216.355(1), RSMo.

(3) An individual under supervision of the Board of Probation and Parole who was sentenced to the State Department of Corrections for selling, giving, or delivering a controlled substance pursuant to Chapter 195 is not to be given credit for parole time as time toward service of his sentence for application of the three-fourths rule, Section 216.355(1), RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Kenneth M. Romines.

Yours very truly,

  
JOHN C. DANFORTH  
Attorney General

Enclosures: Op. No. 37  
12-19-55, Hamilton

Op. No. 60  
9-26-57, Means