

HOUSE BILL NO. 262: It is the opinion of this department that House Bill No. 262, enacted by the 70th General Assembly, is not retroactive; that it became effective on August 29, 1959; that it does not apply to persons confined, prior to August 29, 1959, in institutions maintained by the Department of Corrections.

September 15, 1959



Honorable E. V. Nash  
Warden  
Missouri State Penitentiary  
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"An official opinion is requested with respect to House Bill #262 recently passed by the 70th General Assembly.

Are the contents of this bill to be retroactive, effecting men presently confined at the state penitentiary?"

House Bill No. 262, to which you refer, reads:

"Section 1. When a person has been convicted of a criminal offense in this state

(1) the time spent by him in prison or jail subsequent to the date of his sentence and prior to his delivery to the state department of corrections shall be calculated as a part of the sentence imposed upon him; and

(2) the time spent by him in prison or jail prior to his conviction and the date on which sentence is pronounced may, in the discretion of the judge pronouncing sentence, be calculated as a part of the term of the sentence imposed upon him.

2. When the time spent in prison or jail is calculated as a part of the term of the sentence under the provisions of subdivision 1 of this section, the time so spent in

Honorable E. V. Nash

prison or jail shall, in addition to any reduction of time allowed under section 216.355, RSMo, be deducted from the term of the sentence.

3. It is the duty of the officer required by law to deliver a convicted person to the state department of corrections to endorse upon the commitment papers the length of time spent by the person in a prison or jail subsequent to the date of his sentence and prior to his delivery to the state department of corrections, and if, by the terms of the sentence, the time spent in prison or jail prior to conviction and sentence is to be calculated as a part of the term, the officer shall also endorse upon the commitment papers the length of time spent in prison or jail prior to the person's conviction and sentence."

We see nothing in this bill which would make it retroactive. We direct attention to the case of Clark Estate Co. v. Gentry, 240 S.W.(2d) 124. In that case, the Missouri Supreme Court stated (1.c. 129[6]):

" \* \* \* The rule is that, in the absence of clear legislative intent to the contrary, the effect of statutes is prospective only. 59 C.J., 'Statutes,' Sec. 694, p. 1169; 50 Am. Jur., 'Statutes,' Sec. 478, p. 494; Lucas v. Murphy, 348 Mo. 1078, 156 S.W.2d 686; and Cleveland v. Laclede-Christy Clay Products Co., Mo. App., 113 S.W.2d 1065.  
\* \* \* "

In the instant case, there certainly is no "clear legislative intent" that the statute in question is to be retrospective, and it is therefore our conclusion that it is prospective only.

Such bill became effective on August 29, 1959.

#### CONCLUSION

It is the opinion of this department that House Bill No. 262, enacted by the 70th General Assembly, is not retroactive; that it

Honorable E. V. Nash

became effective on August 29, 1959; that it does not apply to persons confined, prior to August 29, 1959, in institutions maintained by the Department of Corrections.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton  
Attorney General

HPW:om