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JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

March 19, 1985

OPINION NO. 85-83

Hon. James C. Scott
State Senator
Route 1, Box 82-A
Warren, Arkansas 71671

Dear Senator Scott:

This is in response to your request for an opinion on the following:

I respectfully request your official opinion as to whether the Department of Correction has authority to grant a temporary release to an inmate as a reward for good conduct and not for any of the purposes described in Section 13 of Act 50 of the First Extraordinary Session of 1968.

As your letter points out Ark. Stat. Ann. § 46-119 provides that the Arkansas Department of Correction may promulgate rules to authorize visits between inmates ". . . and approved friends, relatives and others, and temporary release of an inmate for such occasions as (emphasis added) the serious illness or death of a member of the inmate's family or an interview of the inmate by a prospective employer."

While "temporary release/meritorious furloughs" may apparently be given for other reasons than those specifically listed in the above statute, it would appear from the language of the statute that the examples given were not intended to be all inclusive.

Administrative Regulation No. 812 of 1981 is the regulation adopted by the Arkansas Department of Correction regarding temporary release/meritorious furloughs. On its face, it is a validly promulgated rule adopted by the Department with the approval of the Arkansas Legislative Counsel. A copy of that regulation is attached. Its stated purpose is ". . . to provide suitable inmate incentive programs and to provide for a normal and orderly transition from the institution to the society. . ." would appear not so far away from the purposes listed in the above act as to be in conflict with it.

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Even if Ark. Stat. Ann. § 46-119 should be construed narrowly, the broad powers of the Board of Corrections contained in Ark. Stat. Ann. 46-101(c) and 46-103(9) indicate that such meritorious furloughs are within the rule making prerogative of the Department. Certainly, there is no legislative or constitutional prohibition against such a practice.

Accordingly, the Department of Correction would seem to have the authority to grant a temporary release to an inmate as a reward for good conduct pursuant to a validly promulgated rule or regulation.

The foregoing opinion which I approve was prepared by Assistant Attorney General Jerry E. Rose.

Sincerely,


STEVE CLARK
Attorney General

SC:JER:lv

Attachment