

County public safety coordinating council, gain time

Number: INFORMAL

Date: December 24, 2002

The Honorable Curtis A. Golden
State Attorney, First Judicial Circuit
Post Office Box 12726
Pensacola, Florida 32501

RE: COUNTIES--COUNTY PRISONERS--GAIN-TIME--authority of county public safety coordinating council to award gain time. ss. 951.26 and 951.31, Fla. Stat.

Dear Mr. Golden:

You ask whether a county commission, upon recommendation of the county's public safety coordinating council, may grant gain time in addition to that authorized by section 951.21, Florida Statutes, in order to reduce inmate population. You also ask whether the council may take steps to reduce inmate population.

This office is precluded from offering an opinion regarding the county commission's authority to grant gain time other than as prescribed in section 951.21, Florida Statutes, absent a request from the county. However, informal comments will be offered to you as a member of the county's public safety coordinating council in order to assist you in this matter.

You state that in Escambia County several jail facilities have a combined capacity of approximately 1422 inmates, but presently house in excess of 1800 individuals. The overcrowding has raised concerns of inmate health and safety, the protection of employees and correctional officers, and the potential for outside intervention. In response to this matter, the board of county commissioners established a county public safety coordinating council to assess the population status of the county's detention or correctional facilities and to make recommendations regarding reducing the inmate population.

Section 951.26, Florida Statutes, contemplates that each county will establish a public safety coordinating council or join in a consortium with one or more other counties to establish such a council for the geographic area represented by the member counties. Among the members of the council are the state attorney, the public defender, the chief circuit judge, the chief county judge, the sheriff, or designees of these officials. The section further provides:

"The council shall meet at the call of its chairperson for the purpose of assessing the population status of all detention or correctional facilities owned or contracted by the county, or the county consortium, and formulating recommendations to ensure that the capacities of such facilities are not exceeded. Such recommendations shall include an *assessment* of the availability of pretrial intervention or probation programs, work-release programs, substance abuse programs, *gain-time schedules*, applicable bail bond schedules, and the confinement status of the inmates housed within each facility owned or contracted by the county or the county consortium." [1] (e.s.)

As a statutorily created administrative entity, the county public safety coordinating council or a consortium of such councils is limited to the powers expressly granted or those necessary to carry out the specifically granted powers.[2] Should there be any doubt as to whether a particular power may be exercised lawfully, it should be resolved against its exercise.[3]

The plain language of the enabling legislation authorizes the council to assess the population status of the county's detention and correctional facilities and to make recommendations to prevent over-crowding of these facilities. There appears to be no greater authority that would allow the council to implement its recommendations or to take independent steps to reduce the inmate population.

Section 951.21, Florida Statutes, prescribes the manner in which gain-time may be awarded by the county commission. This office has previously determined that a county commission may not, absent statutory authority, grant commutation of time for good conduct of county prisoners in excess of that provided in section 951.21, Florida Statutes.[4]

I trust these informal comments will be helpful in resolving the matter that you have raised.

Sincerely,

Richard E. Doran
Attorney General

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[1] Section 951.26(2), Fla. Stat.

[2] See *State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), *cert. dismissed*, 300 So. 2d 900 (Fla. 1974); *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973).

[3] *Id.* See also Ops. Att'y Gen. Fla. 02-01 (2002) and 92-30 (1992).

[4] See Op. Att'y Gen. Fla. 01-13 (2001).