



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2021-1

The Honorable Scott Crow
Director, Oklahoma Department of Corrections
P.O. Box 11400
Oklahoma City, OK 73136-0400

February 23, 2021

Dear Director Crow:

This office has received your request for an Attorney General Opinion in which you ask, in effect, the following questions:

1. Does the Department of Corrections have the authority to award an inmate “achievement earned credits,” as provided for in 57 O.S.Supp.2020, § 138(H), solely for good conduct?
2. Does the Department of Corrections have the authority to award an inmate “achievement earned credits,” as provided for in 57 O.S.Supp.2020, § 138(H), solely for the inmate’s participation in a reentry program?
3. Does the Department of Corrections have the authority to award an inmate “achievement earned credits,” as provided for in 57 O.S.Supp.2020, § 138(H), on a recurring basis for the same “achievement”?

I.
BACKGROUND

Oklahoma law provides for a credit system through which inmates in the custody of the Department of Corrections (“Department”) may reduce their term of imprisonment. This system includes (i) “earned credits” for an inmate’s time served at an assigned class level, *see* 57 O.S.Supp.2020, § 138(A), (D); and (ii) “additional achievement earned credits,” which are granted once an inmate completes a program or attains a goal set by the Department, *id.* § 138(H).¹

With regard to the first category, the class levels that form the basis of earned credits—as well as prerequisites for inclusion in each class level—are set forth in statute. *See* 57 O.S.Supp.2020, § 138(D)(1). These prerequisites include considerations such as time served, the inmate’s work,

¹ “Each earned credit is equivalent to one (1) day of incarceration.” 57 O.S.Supp.2020, § 138(A).

education, and/or program evaluations, and evaluations of the inmate's personal hygiene and maintenance of his/her living area. *See id.*; *see also* OKLA. DEPT. OF CORRECTIONS, *Systems of Incarceration*, OP-060107, pp. 4-5 (May 28, 2020). An inmate's assignment to a particular class level is made by an adjustment review committee based on policies and procedures developed by Department. 57 O.S.Supp.2020, § 138(B). By statute, such policies and procedures must include "written guidelines pertaining to awarding credits for rehabilitation, obtaining job skills and educational enhancement, participation in and completion of alcohol/chemical abuse programs, incentives for inmates to accept work assignments and jobs, work attendance and productivity, conduct record, participation in programs, cooperative general behavior, and appearance." *Id.*

The second category of credits are the subject of your question. Title 57, Section 138(H), which authorizes these credits, provides:

H. Additional achievement earned credits for successful completion of departmentally approved programs or for attaining goals or standards set by the Department shall be awarded as follows:

Bachelor's degree.....200 credits;

Associate's degree.....100 credits;

High School Diploma or High School Equivalency Diploma.....90 credits;

Certification of Completion of Vocational Training.....80 credits;

Successful completion of Alcohol/Chemical Abuse Treatment Program of not less than four (4) months continuous participation.....70 credits;

Successful completion of *other Educational Accomplishments or other programs* not specified in this subsection.....10-30 credits;

Achievement earned credits are subject to loss and restoration in the same manner as earned credits.

57 O.S.Supp.2020, § 138(H) (emphasis added). It is the italicized language in this provision that gives rise to your questions.

II. DISCUSSION

Each of your questions involves an inquiry into the boundaries of the Department's authority under Title 57, Section 138(H). As a public agency, the Department's authority consists of "those powers expressly granted by law, by constitution or statute, and such powers as are necessary for the due and efficient exercise of the powers expressly granted, or such as may be fairly implied from the constitutional provision or statute granting the express powers." *Oklahoma Dept. of Securities ex rel. Faught v. Blair*, 2010 OK 16, ¶ 9, 231 P.3d 645, 652 (emphasis omitted). Beyond these, the

Department “cannot expand those powers by its own authority.” *Marley v. Cannon*, 1980 OK 147, ¶ 10, 618 P.2d 401, 405.

A. Title 57, Section 138 does not permit the Department to award “achievement earned credits” solely for an inmate’s good conduct.

Your first question arises from the Department’s so-called Good Conduct Achievement Credit Program, which was discontinued late last year. Under this “program,” the Department awarded 15 achievement earned credits for “every month of [an inmate’s] continued good conduct,” with good conduct meaning simply “no misconduct convictions.” OKLA. DEPT. OF CORRECTIONS, *Sentence Administration*, OP-060211, p. 18 (July 18, 2017). This was the only requirement inmates had to satisfy in order to receive these credits. The question is whether this is the type of program for which the Department is authorized to award achievement earned credits under Section 138(H).

Looking to the language of Section 138(H), it provides that the Department “shall” award a certain number of achievement earned credits “for successful completion of departmentally approved programs or for attaining goals or standards set by the Department.” 57 O.S.Supp.2020, § 138(H). It then lists five specific programs or goals and the number of credits to be awarded for each, leaving no discretion for the Department. *See Keating v. Edmondson*, 2001 OK 110, ¶ 13, 37 P.3d 882, 888 (“Generally, when the Legislature uses the term ‘shall,’ it signifies a mandatory directive or command.”).

Your question focuses on the sixth entry under Section 138(H), which provides for an award of between 10 and 30 credits for inmates who successfully complete “other Educational Accomplishments or other programs not specified in this subsection.” Thus, by its terms, Section 138(H) allows the Department to determine what those “Educational Accomplishments or other programs” should be, and how many credits (between 10 and 30) each should merit. The Good Conduct Achievement Credit Program is not an “Educational Accomplishment,” so it was permissible only if it was a “program” of the type that the Department had discretion to implement.

Before getting to this specific determination, it is important to reiterate that the Legislature has already provided a process through which inmates may receive credits for good conduct. As explained above, through the awarding of “earned credits” inmates “shall have their term of imprisonment reduced monthly, based upon the class level to which they are assigned,” unless otherwise provided by law. 57 O.S.Supp.2020, § 138(A). One factor in determining an inmate’s class level is his or her conduct record. *Id.* § 138(B). So, for example, an inmate who exhibits “outstanding” behavior is awarded up to 60 earned credits (*i.e.*, 60 days toward completing the sentence) per month. *See id.* § 138(D). And as noted above, the Legislature has provided extensive guidance as to how inmates are to be categorized by class level. *See id.* Thus, while not dispositive of the question, it seems unlikely that the Legislature would, in the same statutory provision, grant the Department virtually unbridled discretion to design a program to award still more credits for an inmate’s good conduct.

Turning now to our interpretation of the word “program,” admittedly it can have a broad meaning. As it is used in Section 138(H), “program” is commonly defined to mean “a plan or system under which action may be taken toward a goal.” *Program*, MERRIAM-WEBSTER, www.merriam-webster.com.² Similarly, the Department’s own interpretation of the term provides that “[a]ll programs receiving achievement credits will have *an approved curriculum* that addresses criminal thinking and behavior.” OKLA. DEPT. OF CORRECTIONS, *Standards for Inmate Programs*, OP-090101, p. 1 (Nov. 27, 2017) (emphasis added). These definitions are thematically consistent with the other achievements listed in Section 138(H),³ each of which involves a course of study, training, or treatment that culminates with a one-time award of credits. Indeed, the statute requires “successful completion” of any program before credits may be awarded. *See also id.* at 8 (requiring the establishment of “completion criteria” for each program, which “cannot be time driven and should be based on skill level attained and/or lessons learned”).

By contrast, a “program” that entails a monthly award of credits to an inmate simply for avoiding a “misconduct conviction” during that month does not share these characteristics. First, there is no ultimate goal that marks the “successful completion” of this program. Instead, it appears to continue in perpetuity so long as the inmate continues to satisfy its single condition. Second, this “program” does not meet the Department’s own internal standard for Section 138(H) programs, which requires “an approved curriculum that addresses criminal thinking and behavior.”⁴ *Standards for Inmate Programs*, OP-090101, p. 1. This suggests that the Department also interprets the word “program” in a manner consistent with the other achievements specifically set forth by the Legislature in Section 138(H).

In sum, Section 138 is constructed in a way that already rewards inmates for good conduct through achieving a higher class level. *See* 57 O.S.Supp.2020, § 138(B). The Legislature also created separate category of “achievement earned credits,” directed the Department to award such credits for specific goals achieved or programs completed, and granted the Department limited authority to create its own programs and award inmates between 10 and 30 credits for successfully completing those programs. *See id.* § 138(H). For the reasons set forth above, Section 138(H) does not expressly grant to the Department the authority to institute a “program” of awarding inmates a monthly stream of “achievement earned credits” simply for avoiding misconduct during that month, nor is any such authority “necessary for the due and efficient exercise of the powers

² *See* 25 O.S.2011, § 1 (“Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears. . .”).

³ Under the doctrine of *noscitur a sociis*, “a statutory term often takes on a shade of meaning by the company it keeps.” *Elwell v. Oklahoma ex rel. Bd. of Regents*, 693 F.3d 1303, 1307 (10th Cir. 2012); *see also Application of Cent. Airlines*, 1947 OK 312, ¶ 17, 185 P.2d 919, 924 (explaining *noscitur a sociis* as “mean[ing] that general and specific words which are capable of an analogous meaning being associated together take color from each other, so that the general words are restricted to a sense analogous to the less general” (quoting *Ex parte Amos*, 112 So. 289, 293 (Fla. 1927))). Under these interpretive guidelines, any “program” enacted by the Department to award achievement earned credits under Section 138(H) must be similar in kind to the specific programs and achievements listed in that provision. *E.g.*, *Sullins v. Am. Med. Response of Oklahoma, Inc.*, 2001 OK 20, ¶¶ 19-20, 23 P.3d 259, 263-64.

⁴ *See also* *Standards for Inmate Programs*, OP-090101, p. 7 (setting forth achievement credit program standards, such as the requirement that “[p]rogram manuals, curriculum materials and a daily schedule detailing the number of hours per week an inmate will spend in approved programs will be maintained”).

expressly granted [to the Department],” or “fairly implied from” Section 138(H). *Faught*, 2010 OK 16, ¶ 9, 231 P.3d at 652.

B. Title 57, Section 138 does not permit the Department to award “achievement earned credits” to an inmate solely for participating in a reentry program.

In January 1, 2016, the Department declared that inmates assigned to reentry programs⁵ “will be awarded 30 achievement credits for every calendar month in the reentry program.” *Sentence Administration*, OP-060211, p. 18. This “program” has also been discontinued, but while it was in place the monthly award of credits did “not cease unless the inmate [wa]s moved to higher security.” *Id.* You have asked whether the Department had the authority under Section 138(H) to award achievement earned credits solely for an inmate’s participation in reentry programs.

For many of the same reasons outlined above, the answer is no. An inmate’s ongoing participation in a reentry program does not involve a plan, system, or curriculum that builds to the achievement of an ultimate goal. Nor is there anything that measures the “successful completion” of the program; it continues until the inmate is either released or “moved to higher security.” *Sentence Administration*, OP-060211, p. 18. Accordingly, for the reasons set forth in the preceding section, the Department had neither the express grant of authority to award achievement earned credits in this manner, nor is such authority “necessary for the due and efficient exercise of the powers expressly granted [to the Department],” or “fairly implied from” Section 138(H). *Faught*, 2010 OK 16, ¶ 9, 231 P.3d at 652.

C. Title 57, Section 138 does not permit the Department to award “achievement earned credits” to an inmate on a recurring basis for the same “achievement.”

Finally, you ask whether Section 138(H) authorizes the Department to award “achievement earned credits” to an inmate on a recurring basis for completing the same achievement. First, we note that as to the first five achievements listed under Section 138(H), the Department does not have discretion. The listed credits “shall be awarded” for an inmate’s “successful completion” of each achievement. So for instance, if an inmate completes two separate courses of study, each of which results in receipt of a Bachelor’s degree, the inmate is entitled to 400 total credits—200 for each degree.

By using the word “recurring,” we assume your question refers to something different. Specifically, may the Department, pursuant to its limited authority under Section 138(H), construct a program so as to allow an inmate to attain a single goal or accomplishment repeatedly on a regular or semi-regular basis? For many of the same reasons set forth in our previous answers, the answer is no. The natural reading of the discretionary portion Section 138(H) is that it applies *only* to a one-time “successful completion” of an educational goal or other program approved by the Department. Once that goal or program has been successfully completed, it cannot be completed again. Accordingly, the Department does not have the express authority to institute a recurring

⁵ Reentry programs permit inmates to serve their sentences outside Department facilities with varying levels of supervision. For the purposes of this award of achievement earned credits, eligible reentry programs included Pre-Parole Conditional Supervision, Electronic Monitoring, Global Positioning Satellite, or Community Supervision. *Sentence Administration*, OP-060211, Attachment U.

award of achievement credits under Section 138(H), nor is such authority “necessary for the due and efficient exercise of the powers expressly granted [to the Department],” or “fairly implied from” Section 138(H). *Faught*, 2010 OK 16, ¶ 9, 231 P.3d at 652.

It is, therefore, the official Opinion of the Attorney General that:

1. The Department of Corrections does not have the authority to award an inmate “achievement earned credits,” as provided for in 57 O.S.Supp.2020, § 138(H), solely for good conduct.
2. The Department of Corrections does not have the authority to award an inmate “achievement earned credits,” as provided for in 57 O.S.Supp.2020, § 138(H), solely for the inmate’s participation in a reentry program.
3. The Department of Corrections does not have the authority to award an inmate “achievement earned credits,” as provided for in 57 O.S.Supp.2020, § 138(H), on a recurring basis for the same “achievement.”

MIKE HUNTER
ATTORNEY GENERAL OF OKLAHOMA

ETHAN SHANER
DEPUTY GENERAL COUNSEL

