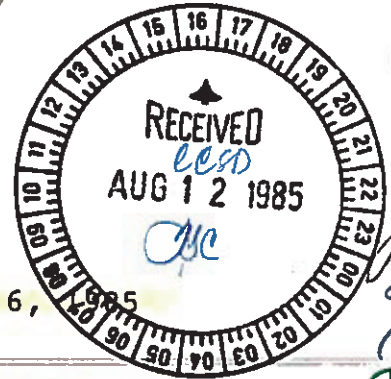




GOVERNMENT OF GUAM  
AGANA, GUAM 96910

August 6, 1985



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Memorandum (Opinion)

Ref: DOC 85-1050

To: Director, Department of Corrections

From: Attorney General *[Signature]*

Subject: Home Furlough and Group Outings for Inmates

This office is in receipt of your memorandum of July 26, 1985, requesting information on the following:

REQUEST NO. 1: Is Department of Corrections General Order 82-03 authorized by Executive Order 72-21, Section VI, Article 1, Addition to Rules and Regulations?

ANSWER: No. See discussion.

REQUEST NO. 2: Are the furlough privileges authorized by the Merit System in General Order 82-03 legal in light of 9 GCA section 80.49?

ANSWER: No. See discussion.

STATEMENT OF FACTS:

For a period of time the Department of Corrections has had a policy allowing the accumulation of merit points for use in exchange for home visits, shopping trips, and group outings for inmates. These furloughs have been allowed on an indiscriminate basis to inmates incarcerated for highly serious felony convictions including those prisoners serving life without parole sentences. Clarification is requested as to the legality of this policy.

DISCUSSION:

Executive Order 72-21 establishing rules and regulations for the Department of Corrections is authorized pursuant to 9 GCA section 90.30. This section allows the Director of Corrections to make rules and regulations for the administration of correctional institutions and other places of confinement subject to the Governor's approval by Executive Order. Section 90.30 does not authorize rules for activities of prisoners outside the confines of the prison. Since the statute does not grant the director the authority to make rules regarding prisoner "outings", the provision in Executive Order 72-21 allowing additions to the rules and regulations for the daily operation of the prison, subject to the approval of the Director of Corrections, allows merely internal rules and regulations. The Executive Order cannot give

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the director more authority in this regard than provided by statute.

9 GCA 80.48 allows an extension of the limits of confinement for prisoners for employment or educational purposes only. Section 80.49 allows an emergency exception to the employment and educational type release for a period not to exceed 24 hours. 9 GCA section 80.49 reads in pertinent part:

An extension of limits may be granted only to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of Medical Services not otherwise available, or for any other compelling reason consistent with the public interest.

This section describes a "class" of purposes which are acceptable for a limited 24-hour release of a prisoner.


A class is a conceptual creation encompassing numerous items with similar characteristics. Thus "a class" is a generalization which associates items for a particular purpose \* \* \* The purpose for defining the class by illustrative particularizations accompanied by a general catch-all reference is to determine how extensively the act was intended or should reasonably be understood to apply. 2A Sutherland Statutory Construction, section 47.18.

Using statutory interpretation, the provision allowing prisoners 24 hour visits for funerals, medical services, and other urgent, compelling reasons consistent with the public interest means emergency type situations. It means a similar type situation to those reasons specifically enumerated in the statute.

Clearly, routine home visits, shopping trips, beach picnics and other prisoner group outings are not permitted by section 80.49 or any other statutory provision. The privileges allowed by General Order 82-03 are based on no legal authority whatsoever and are not permitted by law. Section 80.49 of the Criminal and Correctional Code is the controlling law on what activities qualify for a prisoner release for anything other than work or schooling.

For a faster response to any inquiry about this memorandum, please use the reference number shown.

OFFICE OF THE ATTORNEY GENERAL

By:   
KATHLEEN E. TURNER  
Assistant Attorney General