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STATE OF NEBRASKA
OFFICIAL
DEC 3 1993
DEPT. OF JUSTICE

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

DATE: November 29, 1993

SUBJECT: Completion of drug treatment program as a condition for parole.

REQUESTED BY: Ethel Landrum, Chairperson, Nebraska Board of Parole

WRITTEN BY: Don Stenberg
Attorney General

Marie C. Pawol
Assistant Attorney General

You have inquired whether an offender convicted of conspiracy to deliver a controlled substance is required by Neb. Rev. Stat. § 28-416(13) (Cum. Supp. 1992) to satisfactorily complete a drug treatment program as a condition precedent to parole eligibility.

The answer is no. Neb. Rev. Stat. § 28-416(13) (Cum. Supp. 1992) only requires completion of a drug abuse counseling program when the crime committed falls within the explicit mandates of the statute.

In Neb. Rev. Stat. § 28-416(13), persons convicted of specific drug offenses are required to successfully complete a drug abuse treatment and counseling program as a condition for parole eligibility. Section 28-416(13) provides in relevant part:

> Any person convicted of violating subsection (1), (2), or (3) of **this section** shall only become eligible for parole upon the satisfactory completion of appropriate treatment and counseling on drug abuse . . . .

[Emphasis added].

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From the express language of this provision, it is apparent the crime of conspiracy to deliver a controlled substance is not enumerated within subsections (1), (2), or (3) of § 28-416. To the contrary, Nebraska's conspiracy statute is codified at Neb. Rev. Stat. § 28-202 (1989). This is consistent with the fundamental principal of criminal law that conspiracy is a wholly separate offense distinct from the commission of a substantive crime. ***U.S. v. Green***, 735 F.2d 1018 (7th Cir. 1984); ***U.S. v. McLean***, 738 F.2d 655 (5th Cir.), cert denied, 470 U.S. 1050 (1984).

Since the drug treatment requirement is only applicable to the crimes specified in paragraphs (1), (2), and (3) of § 28-416, and conspiracy to deliver a controlled substance is not included in these paragraphs, it would strain the principals of statutory construction to conclude that the crime of conspiracy to deliver a controlled substance is within the scope of § 28-416(13). As the Nebraska Supreme Court advised in ***Meyers v. Meyers***, 222 Neb. 370, 383 N.W.2d 784 (1986), when the plain meaning of a statute can be easily derived, it is inappropriate to ascribe a contrary purpose or interpretation to the language of the law.

> [S]tatutory language will be given its ordinary and popular meaning; a statute is open to construction only if it is ambiguous. Where the words of a statute are plain, direct, and unambiguous, no interpretation is necessary to ascertain their meaning. It is not within the province of this court to read a meaning into a statute that is not warranted by the legislative language; neither is it within the province of a court to read anything plain, direct and unambiguous out of a statute.

222 Neb. at 375, 383 N.W.2d at 387. Consequently, it is our opinion that Neb. Rev. Stat. § 28-416(13) does not require an individual convicted of a conspiracy to deliver controlled substances to complete a drug treatment program as a condition for parole eligibility.

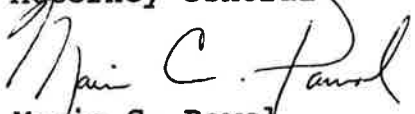
However, we believe that when the Parole Board considers a committed offender for release on parole, his participation or non-participation in available drug treatment programming may be considered by the Board under the criteria set forth in Neb. Rev. Stat. § 83-1,114 (1987). Specifically, the Board is authorized to defer an offender's parole if:

(d) His continued correctional treatment, medical care, or vocational or other training in the facility will substantially enhance his capacity to lead a law abiding life when released at a later date.

Certainly, it may be sound public policy to require individuals convicted of drug conspiracies to complete drug counseling and rehabilitation prior to parole. In our view, § 83-1,114 (d) grants the Board the requisite authority to carry out this public policy on a case by case basis.

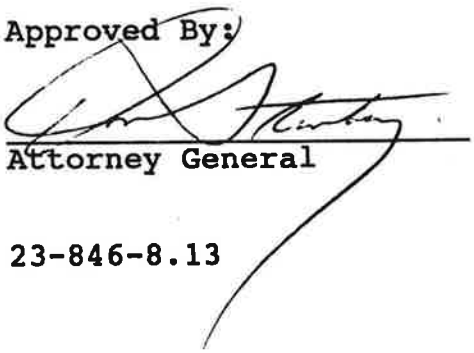
Sincerely,

DON STENBERG
Attorney General



Marie C. Pawol
Assistant Attorney General

Approved By:



Attorney General

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