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#95002
NO.
STATE OF NEBRASKA
OFFICIAL
JAN 18 1995
DEPT. OF JUSTICE

DATE: January 17, 1995

SUBJECT: Neb. Rev. Stat. § 83-1,110

REQUESTED BY: Ronald L. Bartee, Chairperson
Nebraska Board of Parole

WRITTEN BY: Don Stenberg, Attorney General
Marie C. Pawol, Assistant Attorney General

In your opinion request dated December 29, 1994, you make reference to Attorney General Opinion No. 152, dated December 22, 1975, which concluded that an offender could not be paroled under the early release procedures set forth in Neb. Rev. Stat. § 83-1,110 until he or she had served the minimum statutory term. As you point out, Attorney General Opinion No. 93096, dated November 18, 1993, supersedes the earlier opinion by concluding that § 83-1,110 is unconstitutional and should not be relied upon by the Board of Parole to release a prisoner on parole prior to the expiration of his court-imposed minimum term.

You have inquired about the effect of this superseding opinion in the case of an inmate who had been previously released on parole under the terms of § 83-1,110, as that statute was interpreted under Attorney General Opinion No. 152, but whose parole was later revoked as the result of parole violations. You ask whether such an inmate's parole eligibility status should be governed by Attorney General Opinion No. 93096, or whether the inmate may be reparoled even though he has not yet completed his court-imposed minimum term.

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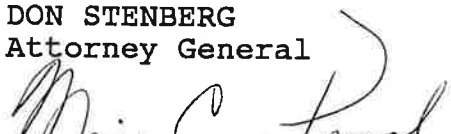
Your opinion request and our response do not address whether an inmate who was on parole, or who had been granted parole at the time Attorney General Opinion No. 93096 was issued, has a vested right to remain on parole. But we fail to see why an inmate, who previously benefitted from an unconstitutional statute by having been released on parole, should continue to receive such a benefit after his parole was properly revoked. As we previously indicated, § 83-1,110 is unconstitutional in our view and should not be utilized to grant early parole prior to the expiration of an inmate's minimum term.

Sincerely,

DON STENBERG
Attorney General



Marie C. Pawol
Assistant Attorney General

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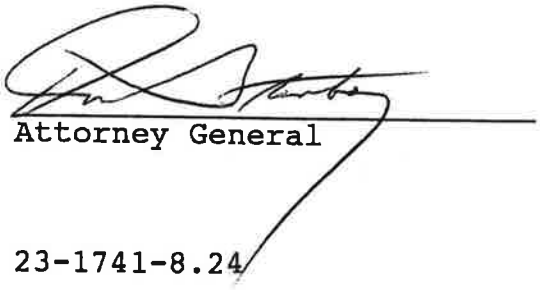

Attorney General

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