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OFFICIAL
OCT 16 1995
DEPT. OF JUSTICE

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DATE: October 19, 1995

SUBJECT: Parole Eligibility for Offenders Who Receive New Felony Convictions While on Parole

REQUEST BY: Ronald L. Bartee, Chairman
Nebraska Board of Parole

WRITTEN BY: Don Stenberg, Attorney General
Laurie Smith Camp, Deputy Attorney General

You have asked two questions regarding the application of Neb. Rev. Stat. § 83-1,123(3) as revised by LB 371 during the 1995 legislative session. As you note, the revision which became effective on September 9, 1995, provides:

> A parolee whose parole has been revoked shall be considered by the Board for reparole at any time in the same manner as any other committed offender eligible for parole, <u>except that no offender whose parole has been revoked as a result of a conviction of a felony committed while on parole shall receive another parole on the original sentence</u>. [Emphasis added to new language provided in LB 371].

You also note that Neb. Rev. Stat. § 83-1,110(2) (1994) states:

> Every committed offender sentenced to consecutive terms, whether received at the same time or at any time during the original sentence, shall be eligible for release on parole when the offender has served the total of the minimum term, less good time. The maximum terms shall be added to compute the new maximum term which, less good time, shall determine the date when discharge from custody of the State becomes mandatory.

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You pose two questions regarding the interpretation of these statutory provisions. First, you ask when an offender will become eligible for parole if the offender has committed a new felony while on parole and has received a consecutive sentence for that new felony. Second, you ask when an offender will be eligible for parole if the offender has committed a new felony while on parole and has received a concurrent sentence for the new felony.

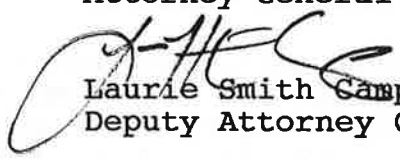
The Nebraska Supreme Court has repeatedly held that under § 83-1,110(2), consecutive sentences are to be consolidated into one sentence, having one minimum term and one maximum term. The Court has held that the consolidated sentence commences at the date of the initial incarceration. ***Luxford v. Benson***, 216 Neb. 115, 117 (1983); ***Boston v. Black***, 215 Neb. 701, 710 (1983); ***Stewart v. Clarke***, 240 Neb. 397, 398 (1992). The Court has made it clear that such a consolidated sentence cannot be divided, interrupted or segmented. ***Gochenour v. Bolin***, 208 Neb. 444, 449 (1981). After consolidation, it is not possible to distinguish one part of the sentence from another. ***Boston***, 215 Neb. at 712.

Just as there is one date when the consolidated sentence begins, there must be one date when the consolidated minimum term ends and one date when the consolidated maximum term ends. So, under § 83-1,123(3) as revised by LB 371, an inmate who has received a consecutive sentence for a new felony committed while on parole would not become eligible for parole on the consolidated sentence. The inmate would be required to serve the consolidated maximum term, less good time.

If an inmate received a new concurrent sentence for a felony while committed on parole, the inmate would become eligible for reparole after serving <u>both</u> the maximum term on the original sentence, less good time, <u>and</u> the minimum term for the new felony conviction, less good time.

Sincerely yours,

DON STENBERG
Attorney General



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Deputy Attorney General

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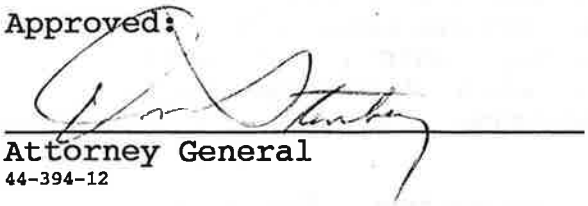

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