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DEPT. OF JUSTICE

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DATE: February 11, 1992

SUBJECT: Parole Supervision Fees

REQUESTED BY: Harold W. Clarke, Director, Nebraska Department of Correctional Services

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

You have asked whether or not the Nebraska statutes permit the Department of Correctional Services and the Parole Board to collect parole supervision fees from parolees. You note that the purpose of the parole supervision fee is "to defray the costs of parole." We conclude that under the current Nebraska statutes, neither the department nor the board may require a parolee to pay a supervision fee.

In your request for an opinion, you refer to §§83-183, 83-183.01, 83-184, 83-192, and 83-1,116 of the Nebraska statutes as possible authority for the collection of a parole supervision fee. We conclude that the provisions in §§83-183, 83-183.01 and 83-184 are not applicable to the issue raised in your request, because these statutes concern the payment and disposition of wages to inmates providing labor for the state, for private employers contracting with the state, or for private employers in connection with a work release program. Sections 83-192 and 83-1,116 are applicable to parole and the authority of the Parole Board. Section 83-1,116 lists those conditions which the board may require that a parolee satisfy in order to remain on parole. The list is finite and does not give the board the discretion to impose conditions which are not authorized by statute.

In several prior opinions, this office has found that administrative agencies may not impose fees unless the fees are authorized by statutes providing sufficient standards and guidelines concerning the determination of the amount of the fees.

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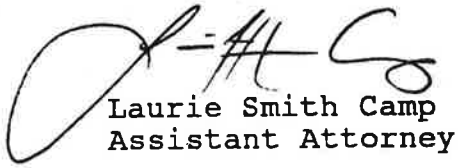
Opinion of Attorney General No. 87052, April 16, 1987; Opinion of Attorney General No. 201, February 19, 1982; Opinion of Attorney General No. 134, August 12, 1981; Report of Attorney General, 1975-76, No. 10 at 11; Report of Attorney General, 1971-72, No. 134 at 305. These opinions are all based, at least in part, upon the principle that any grant of authority to an administrative agency by the Legislature must be administered in accordance with adequate standards and guidelines prescribed by legislative act. Gillette Dairy, Inc. v. Nebraska Dairy Products Board, 192 Neb. 89, 219 N.W.2d 214 (1974); School District No. 39 of Washington County v. Decker, 159 Neb. 693, 68 N.W.2d 354 (1955).

If the Department of Correctional Services and the Parole Board wish to impose a supervision fee as a condition of parole to defray the costs of parole, then the department and the board may wish to consider legislation to amend §83-1,116. When considering any such legislation, you may also want to refer to Chapter 29, Article 10, of the Nebraska statutes governing custody and maintenance of prisoners. The statutes within Chapter 29, Article 10, specify when the cost of keeping and confining an inmate must be paid by the county, by the state, or by the inmate. Of particular interest is the language contained in §29-1006 which defines the criteria to be used by a court when determining whether or not a probationer should be required to pay for the costs of incarceration imposed as part of the probationary sentence. You will note that the statute makes specific provision for the deposit of such payments in the county's general fund. If you were to pursue similar legislation to authorize the collection of parole supervision fees to defray the cost of maintaining a parolee on parole, you would want to include a similar provision to authorize the deposit of the funds in an account which could be used by the department or the board to help cover the costs of such supervision.

Sincerely yours,

DON STENBERG
Attorney General



Laurie Smith Camp
Assistant Attorney General

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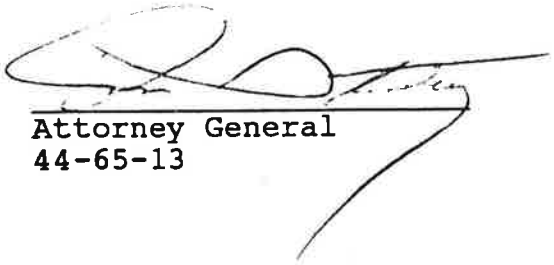

Attorney General
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