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#91001

STATE OF NEBRASKA
OFFICIAL
JAN 3 1991
DEPT. OF JUSTICE

DATE: January 3, 1991

SUBJECT: Extended Work Furlough Program

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

WRITTEN BY: Robert M. Spire, Attorney General
Donald A. Kohtz, Assistant Attorney General

You have requested our opinion regarding whether or not the Department of Correctional Services and the Board of Parole have the legal authority to place certain inmates on an extended work furlough program outside the physical confines of a correctional institution and place them in their own homes. It is our opinion that the Department of Correctional Services with the proper recommendation from the Board of Parole may place certain inmates on an extended work furlough program outside the physical confines of a correctional institution and place them in their own home and or an approved independent living residence.

The statutory authority which allows the release of committed offenders on furlough status is set forth at Neb.Rev.Stat. § 83-184 (Reissue 1987).

> (1) When the conduct, behavior, mental attitude and conditions indicate that a person committed to the department and the general society of the state will be benefited, and there is reason to believe that the best interests of the people of the state and the person committed to the department will be served thereby, in that order, and upon the recommendation of the Board of

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> Parole in the case of each committed offender, the Director of Correctional Services may authorize such person, under prescribed conditions, to:
>
> (a) Visit a specifically designated place or places and return to the same or another facility. An extension of limits may be granted to permit a visit to a dying relative, attendance at the funeral of a relative, the obtaining of medical services, the contacting of prospective employers, or for any other reason consistent with the public interest;

Id.

Neb.Rev.Stat. § 83-184 (Reissue 1987) provides that the Board of Parole must approve and or recommend the placement of a committed offender on a furlough. The ultimate decision as to whether a committed offender is placed on a furlough rests entirely with the Director of the Department of Correctional Services, notwithstanding a favorable recommendation by the Board of Parole. See Housand v. Sigler, 186 Neb. 414, 416, 183 N.W.2d 493, 494 (1971); Neb.Rev.Stat. §§ 83-173(7) (Reissue 1987); 83-176 (Reissue 1987); 83-184 (Reissue 1987).

The extended work furlough program is proposed to place eligible committed offenders on extended work furlough status from anywhere up to a six month period. While on an extended work furlough a committed offender remains subject to the supervision, control, and custody of the Nebraska Department of Correctional Services even though he or she has been given the privilege of being temporarily outside of the institution. Neb.Rev.Stat. § 83-184 (Reissue 1987).

The length of time an eligible committed offender is afforded the privilege of participating in the extended work furlough program is left to the discretion of the Director of the Department of Correctional Services. Neb.Rev.Stat. §§ 83-173 (Reissue 1987); 83-4,111 (Reissue 1987); Administrative Regulation 209.1. The Supreme Court of the United States has stressed repeatedly the importance of judicial recognition of the expertise of prison administrators, and the need for deference to the judgments of experienced prison officials. Bell v. Wolfish, 441 U.S. 520, 547, 99 S.Ct. 1861, 1878-79, 60 L.Ed.2d 447, 474 (1979); Jones v. North Carolina Prisoners' Labor Union, 433 U.S. 119, 126, 97 S.Ct. 2532, 2538, 53 L.Ed.2d 629, 638-39 (1977). Deference to prison administrators stems from the inherent nature of the judicial branch as separate from those branches that administer our prisons, and lacking in the expertise to run correctional facilities. See

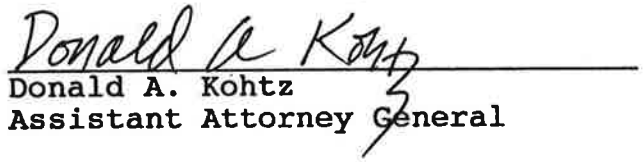
Bell v. Wolfish, 441 U.S. at 547-48, 99 S.Ct. at 1879, 60 L.Ed.2d at 474-75. Running a prison is "at best an extraordinary difficult undertaking." Wolff v. McDonnell, 418 U.S. 539, 566, 94 S.Ct. 2963, 2980, 41 L.Ed.2d 935, 957 (1974).

In Pell v. Procunier, 417 U.S. 817, 94 S.Ct. 2800, 41 L.Ed.2d 495 (1974), the Supreme Court identified four basic goals of the correctional system: the deterrence of crime; the rehabilitation of criminals; the protection of the public; and the maintenance of institutional security. Id. at 822-23, 94 S.Ct. at 2804, 41 L.Ed.2d at 501-02. The Pell court identified this last goal as the central goal of incarceration, essential to successful attainment of all corrective goals. Id. at 823, 94 S.Ct. at 2804, 41 L.Ed.2d at 502. The court also observed that policies involving rehabilitation and institutional security "are peculiarly within the province and professional expertise of corrections officials" Id. at 827, 94 S.Ct. at 2806, 41 L.Ed.2d at 504, and admonished courts to deter to prison officials' decisions in these areas unless the evidence indicates that the officials had greatly exaggerated their response to prison conditions.

This opinion stands for the proposition that the Director of the Department of Correctional Services may upon appropriate recommendation by the Board of Parole place an eligible committed offender in the extended work furlough program.

Sincerely,

ROBERT M. SPIRE
Attorney General



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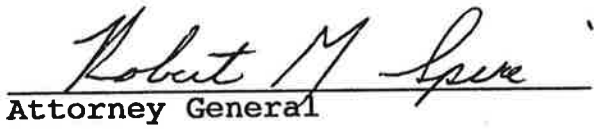

Attorney General

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