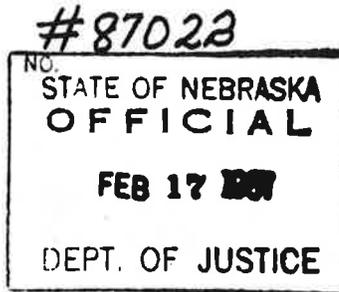


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General



DATE: February 12, 1987

SUBJECT: Constitutionality of LB 318

REQUESTED BY: Senator Richard Peterson
Nebraska State Legislature

WRITTEN BY: Melvin K. Kammerlohr
Deputy Attorney General

You have requested our opinion regarding LB 318. Specifically you asked if the proposed additional aggravating circumstances are unambiguous enough to sufficiently guide and focus a sentencing panel in determining whether it can impose a sentence of death so as to be constitutional.

The Supreme Court of the United States in Gregg v. Georgia, 428 U.S. 153, discussing its previous case of Furman v. Georgia, stated, "Furman mandates that where discretion is afforded a sentencing body on a matter so grave as the determination of whether a human life should be taken or spared, that discretion must be suitably directed and limited so as to minimize the risk of wholly, arbitrary and capricious action."

We are satisfied that the proposed aggravating circumstances in LB 318 are, thus, "suitably directed and limited," as above stated, so as to be found constitutional.

You may wish to include the singular "human being" at the end of proposed (i) and (j) to go along with the plural which is already there if that is your desire.

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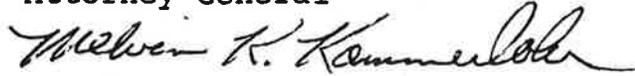
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Susan M. Ugar
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As a practical suggestion, there is an overlapping between the present aggravating circumstance (f) and the proposed (i) and (j); to prevent needless litigation because a sentencing court included both (f) and either (i) or (j), you may wish to limit the use of (f) when either (i) or (j) are used.

Sincerely,

ROBERT M. SPIRE
Attorney General

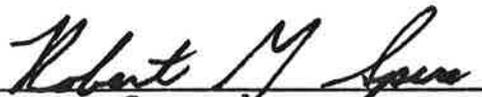


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cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED:


Attorney General