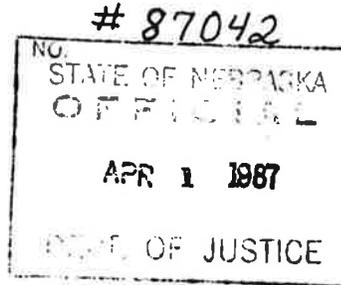


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

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



DATE: March 27, 1987

SUBJECT: Parole Hearings

REQUESTED BY: Senator Jerry Chizek, Chairperson
Judiciary Committee

WRITTEN BY: Robert M. Spire, Attorney General; Linda L.
Willard, Assistant Attorney General

You have requested the opinion of this office as to whether "parole hearings" as referred to Chapter 83, Section 1,111(4), Nebraska Revised Statute (1976), requires that a public hearing be conducted before a quorum of the Parole Board and that the offender be allowed to present evidence, call witnesses, and be represented by counsel. It is the opinion of this office that the parole hearings referred to above do not require the full panoply of due process rights.

In Greenholtz v. Inmates of the Nebraska Penal and Correctional Complex, 442 U.S. 1, 60 L.Ed.2d 668 (1979), the United State Supreme Court held that inmates in the Nebraska Penal and Correctional System did not have a constitutionally protected interest in a parole determination which would call for providing them with all the rights available under the due process clause. In Greenholtz, the court noted that:

Two types of hearings are conducted; initial parole review hearings and final parole hearings. At least once each year initial review hearings must be held for every inmate, regardless of parole eligibility. §83-192(9). At the initial review hearing, the Board examines the inmate's entire preconfinement and postconfinement record. Following that examination it provides an informal hearing; no evidence as such is introduced, but the Board interviews the inmate and considers any letters or statements that he wishes to present in support of a claim for release.

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Senator Jerry Chizek
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If the Board determines from its examination of the entire record and the personal interview that he is not yet a good risk for release, it denies parole, informs the inmate why release was deferred and makes recommendations designed to help correct any deficiencies observed. It also schedules another initial review hearing to take place within one year.

If the Board determines from the file and the initial review hearing that the inmate is a likely candidate for release, a final hearing is scheduled.

. . . At the final parole hearing, the inmate may present evidence, call witnesses and be represented by private counsel of his choice. . . . If parole is denied, the Board furnishes a written statement of the reasons for the denial within 30 days.

442 U.S. at 4-5, 60 L.Ed.2d at 673-674. In upholding the procedures then, and now, in use by the Nebraska Board of Parole, the Court held:

The Nebraska procedure affords an opportunity to be heard, and when parole is denied it informs the inmate in what respects he falls short of qualifying for parole; this affords the process that is due under these circumstances. The Constitution does not require more.

442 U.S. at 16, 60 L.Ed.2d at 681.

Based on the United States Supreme Court holding in Greenholtz, supra, it is our opinion that the review hearing conducted by the Parole Board on an annual basis is sufficient and that the inmate is not entitled to present evidence, call witnesses, and be represented by counsel at this annual hearing.

Sincerely,

ROBERT M. SPIRE
Attorney General

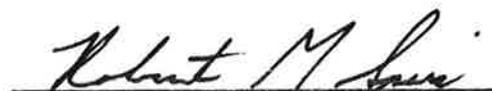


Linda L. Willard
Assistant Attorney General

LLW:bmh

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

APPROVED BY:


Attorney General