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STATE OF NEBRASKA
OFFICIAL
MAR 13 1992
DEPT. OF JUSTICE

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
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DEPUTY ATTORNEYS GENERAL

DATE: March 13, 1992

SUBJECT: Constitutionality of Section 3, Subsection 3, of LB 1127

REQUESTED BY: DiAnna Schimek, Senator

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

You have asked whether or not the following provision in Section 3, Subsection 3, of LB 1127, is constitutional:

> When making a decision regarding a parole of an offender convicted of a Class I, IA, or IB felony, a vote of four members of the Board shall be required.

Specifically, you expressed concern about whether the requirement of a "super-majority" of four members of the Board of Parole to grant parole in certain cases is in conflict with Article IV Section 13 of the Constitution of the State of Nebraska which provides in part:

> Said Board, or majority thereof, shall have power to grant paroles after conviction and judgment, under such conditions as may be prescribed by law, for any offenses committed against the criminal laws of the State except treason and cases of impeachment.

We conclude that the provisions of Section 3, Subsection 3, of LB 1127 are constitutional.

It is a basic principle of constitutional interpretation that each and every clause in a constitution has been inserted for some useful purpose. In re Application A-16642, 236 Neb. 671 (1990); Anderson v. Tiemann, 182 Neb. 393 (1967). Constitutional provisions must be construed as a whole, and no part will be rejected as meaningless or surplusage, if such can be avoided.

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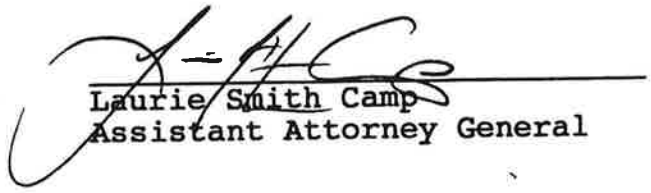
State ex rel. State Ry. Com'n v. Ramsey, 151 Neb. 333 (1949); Mekota v. State Board of Equalization and Assessment, 146 Neb. 370 (1945). The meaning of a constitutional provision is to be determined as of the time of its adoption, and the intent and understanding of its framers and the people who adopted it is the principal inquiry in construing it. State ex rel. State Ry. Com'n, supra.

If Article IV Section 13 of the Nebraska Constitution were intended to mandate that a majority of the Board of Parole have the power to grant paroles, then the language of the section contains surplusage inserted for no useful purpose. Instead, the section provides: "Said Board, or a majority thereof, shall have the power to grant paroles . . . ." Article IV Section 13 also states: "The Legislature shall provide by law for the establishment of a Board of Parole" and that the Board's power to grant paroles may be exercised "under such conditions as may be prescribed by law . . . ."

To give meaning to the clauses cited above, it must be concluded that the legislature has the authority to prescribe conditions which the Board of Parole must follow when determining whether or not to grant a parole. For example, the legislature prescribes maximum and minimum limits for offenses, goodtime provisions used to calculate parole eligibility, conditions for release on parole, and grounds for deferring parole. See, e.g., Neb. Rev. Stat. §§ 83-1,107; 83-1,107.01; 83-1, 108; 83-1,110; and 83-1,114 (Reissue 1987). Because the Nebraska Constitution recognizes that conditions may be prescribed by law for the parole of offenders, one such condition could be that the parole of a certain class of offenders be only upon a unanimous or "super-majority" vote of the members of the Board.

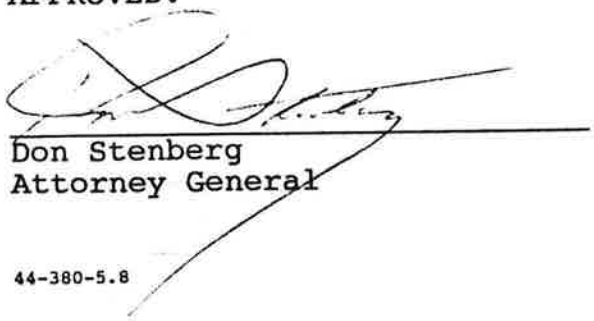
Finally, although the legislative history of Article IV Section 13 is not determinative of the intent of the public when it voted to amend the Constitution, that history indicates that the legislature was expected to have significant latitude to establish a statutory structure for the creation and operation of a Board of Parole. The provisions of Section 3, Subsection 3, of LB 1127 do not contradict either the letter or the apparent intent of Article IV, Section 13, of the Nebraska Constitution.

Sincerely,



Laurie Smith Camp
Assistant Attorney General

APPROVED:



Don Stenberg
Attorney General

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