

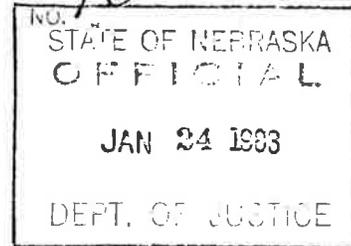
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

January 20, 1983

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Attorney General
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Senator Howard Peterson
Nebraska State Legislature
1124 State Capitol
Lincoln, Nebraska 68509

Dear Senator Peterson:

You have inquired whether any problems could arise because of the differences in the "good time credits" contemplated by the current LB 180 and those enacted by Laws 1982, LB 231 which are presently found at Neb.Rev.Stat. §23-2810 and §23-2811 (1982 Cum. Supp.).

Initially, we call to your attention the fact that we entertain substantial concerns as to the constitutionality of §23-2810 and §23-2811, and that LB 180 suffers, in our opinion, from the same constitutional defects. Section 23-2811 and Secs. 2-4 of LB 180 may well represent areas of legitimate legislative action. However, §23-2810 and Sec. 1 of LB 180, which hinge the availability of good time credits to prisoners upon the population of the county within which the prisoner is housed, we believe violates the equal protection clauses of both the federal and our state's constitution. This conclusion is based upon the premise that any attempt to provide significantly different benefits to prisoners held in the various counties of this state where the only distinguishing feature is the population of the county in which that prisoner is held, violates the concept of equal protection of the law. We are aware of no rational basis by which one could vary the amount or availability of good time credit to the prisoners of political subdivisions of this state based solely upon the population of the county in which that prisoner is housed.

Specifically, we do not believe that prisoners in less populous counties can appropriately be granted greater amounts of good time credit than prisoners housed in more populous counties.

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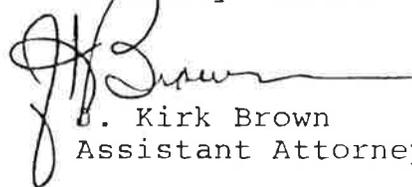
Senator Howard Peterson
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We also note that §23-2811 applies to "any person sentenced to a city or county jail." LB 180 applies, as we understand it, only to persons committed to county jails. Section 23-2811 grants good time to any prisoner sentenced in a city or county facility who does not violate rules of discipline or refuse a work assignment. LB 180 appears to limit the availability of good time to prisoners who have "met the required work evaluation procedures" and desire to participate in the work force program. Also, prisoners in more populous counties, as we understand it, would not have available to them the "work force program" contemplated by LB 180.

Each of the distinctions between LB 180 and §23-2810 and §23-2811 noted above raise significant equal protection questions which in our opinion would render such legislation unconstitutional. The simplest and possibly only way to avoid the equal protection problems we have discussed would be to create a uniform good time credit system or work force program applicable to all counties of this state without reference to the population of those counties. As an example, the present equal protection problems that we perceive with regard to §23-2810 and §23-2811 could, in our opinion, be resolved by repealing the provisions of §23-2810 and making the good time credits provided by §23-2811 available uniformly throughout the state.

Yours truly,

PAUL L. DOUGLAS
Attorney General



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