

DEPARTMENT OF JUSTICE

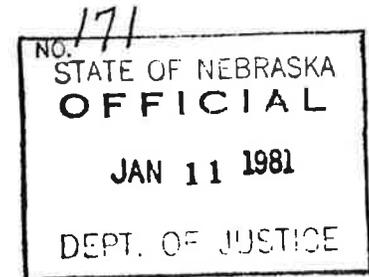
STATE OF NEBRASKA

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January 7, 1983

Senator Rex Haberman
Nebraska State Legislature
State Capitol
Lincoln, Nebraska 68509



Dear Senator Haberman:

You have asked us the following question: "Are there any constitutional problems with establishing mandatory minimum terms of imprisonment for individuals convicted under Section 28-1205 of the crime of using or unlawfully possessing a firearm or other deadly weapon during the commission of a felony?" You indicate in your letter that you intend to introduce legislation to establish such a rule of law in the State of Nebraska in the present session.

There has been a great deal of litigation concerning this particular issue around the country in recent years. As a result of this litigation, a number of articles have been written in legal periodicals and encyclopedias dealing with these questions. Some of these articles comment: Length of sentence as a violation of constitutional provisions prohibiting cruel and unusual punishment, 33 A.L.R.3d 335, and validity of statutes prohibiting or restricting parole, probation or suspension of sentence in cases of violent crime, 100 A.L.R.3d 431. While there are other comments related to this general issue, we believe that without citing the specific cases relied upon in these annotations, it is fair to quote from the summary of the last referred to annotation:

As to the validity of statutes prohibiting or restricting parole, probation, or suspension of sentence in cases of violent crimes, the courts have been uniform in upholding the statutes as against a number of different challenges.

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Although this specific issue has not been raised before the Nebraska Supreme Court, we believe that the weight of authority is such that our court would be likely to hold that a statute which provided for a mandatory minimum term of imprisonment for individuals convicted under Neb.Rev.Stat. §28-1205 (Reissue 1979), as you propose, would be found to be a constitutional exercise of the authority of the Legislature.

Sincerely,

PAUL L. DOUGLAS
Attorney General


Patrick T. O'Brien
Assistant Attorney General

PTO:ejg

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