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NO.
STATE OF NEBRASKA
OFFICIAL
DEC 3 1993
DEPT. OF JUSTICE

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

DATE: November 29, 1993
SUBJECT: Completion of drug treatment program as a condition for parole.
REQUESTED BY: Ethel Landrum, Chairperson, Nebraska Board of Parole
WRITTEN BY: Don Stenberg
Attorney General
Marie C. Pawol
Assistant Attorney General

You have inquired whether an offender convicted of conspiracy to deliver a controlled substance is required by Neb. Rev. Stat. § 28-416(13) (Cum. Supp. 1992) to satisfactorily complete a drug treatment program as a condition precedent to parole eligibility.

The answer is no. Neb. Rev. Stat. § 28-416(13) (Cum. Supp. 1992) only requires completion of a drug abuse counseling program when the crime committed falls within the explicit mandates of the statute.

In Neb. Rev. Stat. § 28-416(13), persons convicted of specific drug offenses are required to successfully complete a drug abuse treatment and counseling program as a condition for parole eligibility. Section 28-416(13) provides in relevant part:

Any person convicted of violating subsection (1), (2), or (3) of this section shall only become eligible for parole upon the satisfactory completion of appropriate treatment and counseling on drug abuse

[Emphasis added].

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From the express language of this provision, it is apparent the crime of conspiracy to deliver a controlled substance is not enumerated within subsections (1), (2), or (3) of § 28-416. To the contrary, Nebraska's conspiracy statute is codified at Neb. Rev. Stat. § 28-202 (1989). This is consistent with the fundamental principal of criminal law that conspiracy is a wholly separate offense distinct from the commission of a substantive crime. *U.S. v. Green*, 735 F.2d 1018 (7th Cir. 1984); *U.S. v. McLean*, 738 F.2d 655 (5th Cir.), cert denied, 470 U.S. 1050 (1984).

Since the drug treatment requirement is only applicable to the crimes specified in paragraphs (1), (2), and (3) of § 28-416, and conspiracy to deliver a controlled substance is not included in these paragraphs, it would strain the principals of statutory construction to conclude that the crime of conspiracy to deliver a controlled substance is within the scope of § 28-416(13). As the Nebraska Supreme Court advised in *Meyers v. Meyers*, 222 Neb. 370, 383 N.W.2d 784 (1986), when the plain meaning of a statute can be easily derived, it is inappropriate to ascribe a contrary purpose or interpretation to the language of the law.

[S]tatutory language will be given its ordinary and popular meaning; a statute is open to construction only if it is ambiguous. Where the words of a statute are plain, direct, and unambiguous, no interpretation is necessary to ascertain their meaning. It is not within the province of this court to read a meaning into a statute that is not warranted by the legislative language; neither is it within the province of a court to read anything plain, direct and unambiguous out of a statute.

222 Neb. at 375, 383 N.W.2d at 387. Consequently, it is our opinion that Neb. Rev. Stat. § 28-416(13) does not require an individual convicted of a conspiracy to deliver controlled substances to complete a drug treatment program as a condition for parole eligibility.

However, we believe that when the Parole Board considers a committed offender for release on parole, his participation or non-participation in available drug treatment programming may be considered by the Board under the criteria set forth in Neb. Rev. Stat. § 83-1,114 (1987). Specifically, the Board is authorized to defer an offender's parole if:

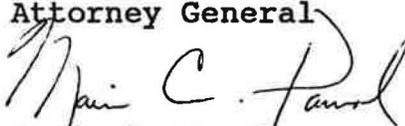
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(d) His continued correctional treatment, medical care, or vocational or other training in the facility will substantially enhance his capacity to lead a law abiding life when released at a later date.

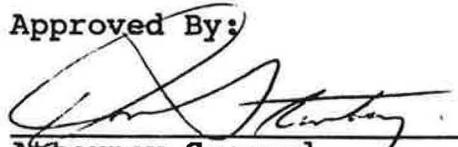
Certainly, it may be sound public policy to require individuals convicted of drug conspiracies to complete drug counseling and rehabilitation prior to parole. In our view, § 83-1,114 (d) grants the Board the requisite authority to carry out this public policy on a case by case basis.

Sincerely,

DON STENBERG
Attorney General


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Approved By:


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23-846-8.13