DATE: August 21, 1996

SUBJECT: Pardon Board Authority

REQUESTED BY: Senator Chris Beutler

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

You have asked whether the Nebraska Pardons Board can commute a death sentence to a sentence of life without parole. We conclude that the Nebraska Pardons Board has the absolute power of pardon under the Nebraska Constitution and that the Board may commute a sentence to any lesser sentence or may issue a complete pardon to the offender.

Article IV, § 13 of the Nebraska Constitution provides in part:

"The Governor, Attorney General and Secretary of State, sitting as a Board, shall have power to remit fines and forfeitures and to grant respites, reprieves, pardons, or commutations in all cases of conviction for offenses against the law of this State except cases of treason and cases of impeachment.

The Nebraska Supreme Court has held that the Pardons Board has "unfettered discretion" to grant or deny an application for clemency. Otey v. State, 240 Neb. 813, 828-30 (1992)."
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Just as the power of pardon is vested absolutely in the
President under the United States Constitution, the power is vested
absolutely in the Board of Pardons under the Nebraska Constitution.
The Laura, 114 U.S. 411, 414 (1884); Schick v. Reed, 419 U.S. 256,
266 (1974).

Because the power of pardon is vested absolutely in the
Nebraska Pardons Board under the Nebraska Constitution, the Pardons
Board may commute any sentence to a lesser sentence, including the
commutation of a death sentence to a sentence of life without
parole. One Pardons Board does not have the power to bind another
future Pardons Board, however. So, if one Pardons Board granted a
commutation of a death sentence to a sentence of life without
parole, future Pardons Boards would not be precluded from commuting
the sentence of life without parole to a sentence of a term of
years. See, e.g., State ex rel. Stenberg v. Moore, 249 Neb. 589,

As you consider "possible legislation in this area", you may
wish to bear in mind that where a state constitution fixes the
power to pardon, that power is not subject to legislative control
except as provided by the constitution itself. The Laura, 114 U.S.
at 414; Schick, 419 U.S. at 266; and Pardon and Parole, 59 Am. Jur.

Sincerely,

DON STENBERG
Attorney General

[Signature]

Laurie Smith Camp
Deputy Attorney General

APPROVED!

[Signature]
Attorney General

44-390-10