

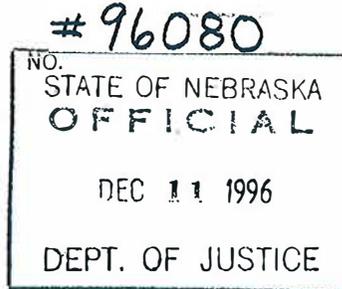


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DON STENBERG
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DATE: December 11, 1996

SUBJECT: Vote of the Board of Parole necessary for parole or parole revocation

REQUEST BY: Manuel S. Gallardo, Vice Chair
Nebraska Board of Parole

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

You have asked whether the votes of two members of the Board of Parole are sufficient to parole an inmate or to revoke an inmate's parole, if only three members of the board are present at the hearing. We conclude that a majority of a three-member quorum of the board is sufficient to vote for a revocation of parole and for the transaction of other official business of the board, with the exception of the granting of paroles. We conclude that the votes of at least three board members are necessary for the granting of a parole.

Neb. Rev. Stat. §83-189 (1994) provides in part: "The Board of Parole shall consist of five full-time members to be appointed by the Governor." Neb. Rev. Stat. §83-196 (1994) provides in part: "Three members of the Board of Parole shall constitute a quorum for the purpose of transacting any official business. The decisions of the Board of Parole shall be by majority vote."

The Nebraska Constitution at Art. IV, §13, however, provides: "Said board [of Parole], or a majority thereof, shall have power to grant paroles after conviction and judgment, under such circumstances as may be prescribed by law, for any offenses committed against the criminal laws of this state except treason

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Manuel S. Gallardo, Vice Chair
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and cases of impeachment." The Nebraska Constitution does not authorize the board to grant parole upon the vote of a majority of a quorum, but requires that the power to parole be exercised only by the "board, or a majority thereof." Neb. Rev. Stat. §83-1,111(2) (1994) also provides that the board's decision regarding an offender's release on parole "shall be by majority vote of the board." Because §83-189 provides that the board, by definition, consists of five members, we conclude that the votes of three members of the board are required for the granting of parole, even if one or more vacancies exist on the board.

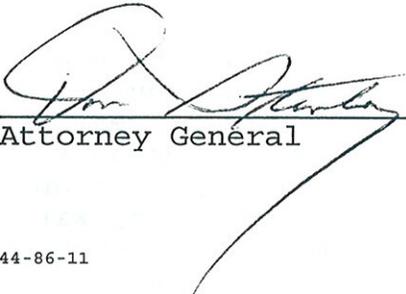
Sincerely,

DON STENBERG
Attorney General



Laurie Smith Camp
Deputy Attorney General

APPROVED:



Attorney General