

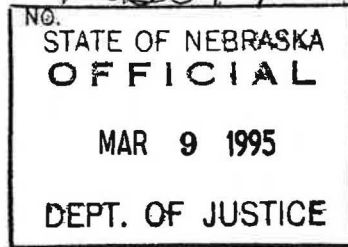


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DATE: March 8, 1995

SUBJECT: Responsibilities of the Secretary of State under
Neb. Rev. Stat. § 83-1,132 (1994)

REQUESTED BY: Secretary of State Scott Moore

WRITTEN BY: Don Stenberg, Attorney General
J. Kirk Brown, Assistant Attorney General

The following is in response to your letter of March 1, 1995 requesting our opinion on your responsibilities as a member of the State of Nebraska Board of Pardons with respect to the requirements of Neb. Rev. Stat. § 83-1,132 (1994). That statute provides, in pertinent part:

Whenever an application for exercise of the pardon authority is filed with the secretary of the Board of Pardons by a committed offender who is under a sentence of death, the sentence shall not be carried out until the board rules upon such application.

Pursuant to Neb. Rev. Stat. § 83-1,126 (1994) you, as the State of Nebraska's duly elected Secretary of State, occupy the position of secretary of the Board of Pardons. In that capacity, under the current procedures of the Board of Pardons, it would be your responsibility to immediately issue a stay of execution upon receipt of a satisfactory application. Nebraska Pardons Board Policy and Procedure Guideline 004.05 (July 1, 1994).

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I.

You first inquire whether you should issue the stay of execution provided by § 83-1,132 if you are in receipt of an application for the exercise of the pardon authority which does not indicate it is the personal request of the death-sentenced prisoner.

Section 83-1,132 provides that the application for the exercise of the pardon authority must be filed with the Board of Pardons "by a committed offender". The clear import of that language is that, to be effective, the application must represent the personal desire of the death-sentenced prisoner to obtain this consideration and must affirmatively reflect that fact.

II.

Must the application anticipated by § 83-1,132 be in writing?

We believe that it must. The statute anticipates that the application described be "filed with the secretary of the Board of Pardons". In order to fulfill the "filing" requirement of the statute, the application must assume physical form. An application in written form is anticipated by the statute.¹

III.

Must the application anticipated by § 83-1,132 bear the signature of the applicant?

Again, we believe that it must. As we noted above, the request for this consideration by the Board of Pardons must represent the personal desire of the applicant. Requiring that the application bear the signature of the applicant provides reasonable indicia that this statutory requirement had been met.²

¹ We note that under the current policies of the Board of Pardons that all applications for the exercise of the pardon authority must be submitted "on the form prescribed by the Board". Nebraska Board of Pardons Policy and Procedure Guideline 004.01 (July 1, 1994).

² We note that the current forms created by the Board of Pardons for individuals seeking a commutation or full pardon require the signature of the applicant.

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IV.

May the application anticipated by § 83-1,132 be made by means of a telephone call or personal contact?

No. In view of the preceding discussion, neither a telephonic communication nor direct verbal communication with the secretary of the Board of Pardons or the Board of Pardons' staff, requesting the exercise of the pardon authority, would meet the requirements of the statute and the statutory stay of execution should not issue as a result of such contact from any party.

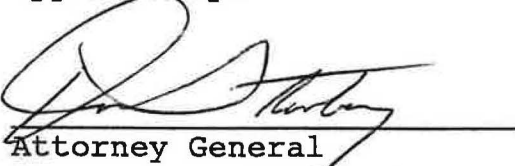
Yours truly,

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Approved By:


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45-593-9