

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
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September 28, 1977

To: Joseph S. DeFilipp, Adm. Asst., State Parole Board
From: Joseph E. Brennan, Attorney General
Re: State Parole Board Voting Procedures

FACTS:

State Parole Board release procedures currently require all decisions on release be made by "a majority vote of the Board in attendance" at the release hearing. It has been proposed, however, that the Board adopt a different voting requirement in the case of inmates sentenced to life imprisonment:

If there are three members or four members in attendance, a vote of three members will be necessary to grant parole. If there are five members in attendance, then a parole release will require the affirmative vote of four Board members. Failure to reach the designated number of votes will require that the Board vote on an alternative disposition considering case on its individual circumstances."

QUESTION:

May the State Parole Board legitimately adopt a different voting requirement for decisions on the release of inmates sentenced to life imprisonment?

ANSWER;

The State Parole Board may not treat separately inmates sentenced to life imprisonment without legislative approval.

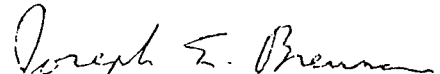
DISCUSSION:

The State Parole Board has discretionary authority to grant "parole from a penal or correctional institution" (34 M.R.S.A. § 1617) after the expiration of an inmate's or prisoner's period of confinement or

after compliance with conditions provided for in sections 1672 and 1674 [of Title 34] applicable to the sentence being served by the prisoner or inmate. (34 M.R.S.A. § 1671).

Sections 1672 and 1674 of Title 34 of the Maine Revised Statutes Annotated set forth the time when inmates or prisoners serving particular sentences are eligible for a release hearing by the Board. In subsection 3 of section 1672, prisoners sentenced to life imprisonment become eligible for a hearing "[p]rior to the expiration of a 15-year term of imprisonment, less deduction for good behavior. . . ." In the opinion of this office, since the legislature has already undertaken to classify inmates according to sentence for the purposes of determining eligibility for a release hearing, the Parole Board may not further discriminate on the basis of sentence by the adoption of special voting procedures for inmates sentenced to life imprisonment.

The Parole Board must treat equally all inmates who the legislature has determined are eligible for a release hearing. This is not to say the Board must ignore an inmate's criminal history, including the circumstances surrounding the offense or offenses which resulted in the imposition of a particular sentence. The Parole Board has exclusive jurisdiction to grant, revoke, or reinstate parole, but it may not create different classes of inmates for separate treatment. This is a legislative function and may not be done legitimately by the Parole Board in the guise of the adoption of a policy, regulation or procedure. cf. 34 M.R.S.A. § 1552.



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