



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 15, 1994

Mr. Michael F. Miller
General Counsel
Board of Pardons and Paroles
P.O. Box 13401
Austin, Texas 78711

Letter Opinion No. 94-054

Re: Whether a three member parole panel has exclusive authority to make parole decisions when the offense is a capital felony committed before the effective date of section 7(g) of article 42.18 of the Code of Criminal Procedure (ID# 24950)

Dear Mr. Miller:

The Board of Pardons and Paroles requests advice on section 7(g) of article 42.18 of the Code of Criminal Procedure, which states as follows:

The board may grant parole to a person convicted of a capital felony only on a two-thirds vote of the entire membership of the board.

Section 7(g) provides an exception to the usual procedure stated in section 7(e):

Except as provided by Subsection (g) of this section, in matters of parole, release to mandatory supervision, and revocation of parole or mandatory supervision, the board members shall act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the chairman of the board. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by majority vote.

You ask whether a three-member parole panel has exclusive authority to make parole decisions when the offense is a capital felony committed before September 1, 1993.

Section 7(g) was adopted by the Seventy-third Legislature as a provision of three separate enactments. See S.B. 532, Acts 1993, 73d Leg., ch. 988, § 11.02; S.B. 1067, Acts 1993, 73d Leg., ch. 900, § 6.03; H.B. 537, Acts 1993, 73d Leg., ch. 426, § 1. Neither Senate Bill 532 nor House Bill 537 includes a transition provision, but Senate Bill 1067 includes the following transition provision:

(a) The change in law made by this article [article 6 of S.B. 1067] to Article 42.18, Code of Criminal Procedure, applies only to a defendant sentenced for an offense committed on or after the

effective date of this article. A defendant sentenced for an offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

(b) For the purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before that date.

Acts 1993, 73d Leg., ch. 900, § 6.04. Article 6 of Senate Bill 1067 took effect September 1, 1993. *Id.* § 6.05.¹

The Code Construction Act provides as follows with respect to amendments to the same statute enacted at the same session of the legislature:

[T]he amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

Gov't Code § 311.025(b).

The three bills that added section 7(g) to article 42.18 of the Code of Criminal Procedure are not necessarily inconsistent as to the group of convicted defendants to which that section applies. Since two bills are silent as to a transition provision, the three bills may be harmonized by regarding their provisions as cumulative. The transition provision would then apply to all versions of section 7(g). Even if the three amendments are considered to be irreconcilable, Senate Bill 1067, which includes the transition provision, would prevail as the latest in date of enactment of the three bills. The last legislative action taken to adopt Senate Bill 1067 occurred on May 29, 1993, while the last legislative actions taken to adopt Senate Bill 532 and House Bill 537 occurred on May 28, 1993 and May 22, 1993 respectively. *See* Acts 1993, 73d Leg., ch. 900, § 13.03, at 3769; *see also* Acts 1993, 73d Leg., ch. 988, § 12.02, at 4317-18. Acts 1993, 73d Leg., ch. 426, § 2, at 1734.

Thus, the transition provision found in Senate Bill 1067 applies to article 42.18, section 7(g). The requirement of section 7(g), that parole may be granted to a person convicted of a capital felony only on a two-thirds vote of the entire membership of the Board of Pardons and Paroles, applies to a defendant sentenced for an offense committed on or after the September 1, 1993, effective date of section 7(g). If the defendant is sentenced for an offense committed before the effective date, the former version of section

¹House Bill 537 became effective on June 6, 1993, and the provision of Senate Bill 532 that adopted section 7(g) of article 42.12, Code of Criminal Procedure, became effective on September 1, 1993. *See* Acts 1993, 73d Leg., ch. 426, § 2; Acts 1993, 73d Leg., ch. 988, § 11.08.

7(e) applies to the parole determination. Prior to amendment by the Seventy-third Legislature, section 7(e) read as follows:

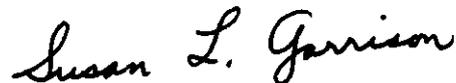
In matters of parole, release to mandatory supervision, and revocation of parole or mandatory supervision, the board members shall act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the chairman of the board. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by majority vote.

Acts 1990, 71st Leg., ch. 25, 6th C.S., § 19, at 115. Accordingly, parole decisions concerning a person convicted of a capital felony committed before September 1, 1993, the effective date of section 7(g) of article 42.18, Code of Criminal Procedure, must be made by a three-member panel in accordance with former section 7(e) quoted above.

S U M M A R Y

Section 7(g) of article 42.18 of the Code of Criminal Procedure provides that the Board of Pardons and Paroles may grant parole to a person convicted of a capital felony only on a two-thirds vote of the entire membership. However, parole decisions concerning a person convicted of a capital felony committed before September 1, 1993, the effective date of section 7(g), must be made by a three-member panel in accordance with former section 7(e) of article 42.18, Code of Criminal Procedure.

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee