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NO. 15-002
STATE OF NEBRASKA
OFFICIAL
FEB 17 2015
DEPT. OF JUSTICE

SUBJECT: LB 280 – Constitutionality of Reducing the Percentage of the Actual Value of Agricultural and Horticultural Land Used in Calculating State Aid Value Under the Tax Equity and Educational Opportunities Support Act.

REQUESTED BY: Senator Al Davis
Nebraska Legislature

WRITTEN BY: Doug Peterson, Attorney General
L. Jay Bartel, Assistant Attorney General

LB 280 contains several provisions relating to school funding. The bill proposes creation of a school-funding surtax on individuals with an income tax liability. LB 280, § 1. The maximum levy rate for school districts would be reduced in incremental steps over a period of years from the current rate of $1.05 per one hundred dollars of taxable value to $.805 per one hundred dollars of value by fiscal year 2020-2021. LB 280, § 2. The maximum levy rate for learning communities would also be reduced over the same period from the current rate of $.95 per one hundred dollars of taxable value to $.705 per one hundred dollars of value. *Id.* The bill also includes several changes to the Tax Equity and Educational Opportunities Support Act ["TEEOSA"]. Section 8 would amend Neb. Rev. Stat. § 79-1015.01 (2014), which establishes the local effort rate for inclusion in local system formula aid resources, by reducing the rate to $.755 for school fiscal year 2017-18 and subsequent years. LB 280, § 8. The bill would also lower the percentage of agricultural and horticultural land used in determining state aid value from 72 percent to 62.4 percent of actual value. LB 280, § 9. Beginning in school fiscal year 2017-19, a foundation aid amount of $500 would be provided for each student in all school districts. LB 280, § 12.

Your original request referenced prior legislative proposals to "reduce the valuation of agricultural and horticultural land for the purposes of calculating state aid to

schools...." Subsequent to receipt of your request, you introduced LB 280. It is our understanding that you seek our opinion on the constitutionality of that portion of the bill which would lower the percentage of agricultural and horticultural land used in determining state aid value from 72 percent to 62.4 percent of actual value.

Your request does not articulate a specific constitutional issue to be addressed, or identify any particular constitutional provision this portion of the bill may contravene. To the extent that the bill proposes only to reduce the portion of state aid value for agricultural and horticultural land from 72 percent to 62.4 percent of actual value, while retaining the state aid value for real property other than agricultural and horticultural land at 96 percent of actual value, there may be a question whether this establishes an unreasonable classification in violation of the prohibition against special legislation in Neb. Const. art. III, § 18.

Agricultural land and horticultural land is "a separate and distinct class of property for purposes of taxation...", and is "valued for taxation at seventy-five percent of its actual value." Neb. Rev. Stat. § 77-201(2) (2009). Agricultural land and horticultural land that "meets the qualifications for special valuation..." is also a "separate and distinct class of property for purposes of taxation..." and is "valued for taxation at seventy-five percent of its special value...." Neb. Rev. Stat. § 77-202(3) (2009). All other real property that is not expressly exempt from taxation "shall be subject to taxation and shall be valued at its actual value." Neb. Rev. Stat. § 77-202(1) (2009). "Actual value of real property for purposes of taxation means the market value of real property in the ordinary course of trade." Neb. Rev. Stat. § 77-112 (2009).

For statewide equalization purposes, the "acceptable range" for agricultural land and horticultural land is "sixty-nine to seventy-five percent of actual value." Neb. Rev. Stat. § 77-5023(2)(a) (2009). The acceptable range for agricultural and horticultural land receiving special valuation is "sixty-nine to seventy-five percent of special valuation...." Neb. Rev. Stat. § 77-5023(2)(b) (2009). For all other real property, the acceptable range is "ninety-two to one hundred percent of actual value." Neb. Rev. Stat. § 77-5023(2)(c) (2009).

TEEOSA requires the Property Tax Administrator to "compute and certify to the State Department of Education the adjusted valuation for the current assessment year for each class of property in each school district and each local system." Neb. Rev. Stat. § 79-1016(2) (2014). "The adjusted valuation of property of each school district and each local school system, for purposes of determining state aid pursuant to the Tax Equity and Education Opportunities Support Act, shall reflect as nearly as possible the state aid value...." *Id.* Neb. Rev. Stat. § 79-1016(3) (2014) provides that "state aid value" means

> (a) For real property other than agricultural and horticultural land, ninety-six percent of actual value;
>
> (b) For agricultural and horticultural land, seventy-two percent of actual value as provided in sections 77-1359 to 77-1363. For agricultural and

horticultural land that receives special valuation, seventy-two percent of special valuation as defined in section 77-1343; and

(c) For personal property, the net book value as defined in section 77-120.

"State aid value" for agricultural and horticultural land, including agricultural and horticultural land receiving special valuation, is thus currently set at 72 percent of actual or special value, the midpoint of the acceptable range of value for these classes of property. Similarly, "state aid value" for all other taxable real property is 96 percent of actual value, the midpoint of the range for real property other than agricultural and horticultural land or land subject to special valuation. Thus, adjusted valuation of property for state aid purposes is currently determined using the midpoint of the acceptable range for each class of property as the measure of state aid value. Section 9 of LB 280 would lower the measure of state aid value from 72 percent, the midpoint of the acceptable range for agricultural and horticultural land and agricultural and horticultural land receiving special valuation, to 62.4 percent. Adjusted valuation for state aid purposes for all other real property would remain at 96 percent, the midpoint of the acceptable range.

Article III, § 18, provides:

The Legislature shall not pass local or special laws in any of the following cases, that is to say:

* * *

Granting to any corporation, association, or individual any special or exclusive privileges, immunity, or franchise whatever.... In all other cases where a general law can be made applicable, no special law shall be enacted.

The Nebraska Supreme Court has stated that a legislative act can violate art. III, § 18, as special legislation in "one of two ways: (1) by creating a totally arbitrary and unreasonable method of classification, or (2) by creating a permanently closed class." *Haman v. Marsh,* 237 Neb. 699, 709, 467 N.W.2d 836, 845 (1991). "A special legislation analysis focuses on a legislative body's purpose in creating a challenged class and asks if there is a substantial difference of circumstances to suggest the expediency of diverse legislation." *J. M. v. Hobbs,* 288 Neb. 546, 557, 849 N.W.2d 480, 489 (2014). "The prohibition aims to prevent legislation that arbitrarily benefits a special class." *Id.* "Classifications for the purpose of legislation must be real and not illusive; they cannot be based on distinctions without a substantial difference." *Big John's Billards, Inc. v. State,* 288 Neb. 938, 945, 852 N.W.2d 727, 735 (2014). "A legislative body's distinctive treatment of a class is proper if the class has some reasonable distinction from other subjects of a like general character." *Id.* "[T]hat distinction must bear some reasonable relation to the legitimate objective and purposes of the legislative act." *Id.* As no closed classification is implicated, the question is whether the distinction between the percentages of agricultural and horticultural lands and other real property,

utilizing a percentage below the midpoint of the range for agricultural and horticultural lands and land subject to special valuation while retaining the midpoint of the range for other real property, establishes an arbitrary and unreasonable classification.

In 2011, legislation was introduced which proposed to incrementally reduce the percentage of the actual value of agricultural and horticultural land used to calculate state aid from 72 percent to 62 percent over a ten year period. The legislative history of the bill (LB 440) noted this proposal would "decrease formula resources in the calculation of state aid for school districts that have agricultural and horticultural land...", which would "in turn trigger an increase in equalization aid to those school districts." Committee Records on LB 440, 102nd Leg., 1st Sess. 1 (Feb. 1, 2011). The bill's principal introducer stated the bill was intended to provide school districts the benefit of additional state aid, and that school districts would then "possibly lower the levy of the property taxes." *Id.* (Statement of Sen. Heidemann). The introducer further stated "the bill [was] mainly to get more state aid to...more rural school districts...", and "would help neutralize the effect of soaring agricultural land values and resulting decrease in state aid that burdens our rural communities in supporting K-12 school districts." *Id.* at 1-2 (Statement of Sen. Heidemann). The introducer noted that the number of unequalized school districts (districts not receiving equalization aid under TEEOSA) had risen from 23.5 percent in 2001 to around 30 percent of all districts in 2011. *Id.* at 2 (Statement of Sen. Heidemann). Supporting testimony noted that, "[s]ince 2005, property tax increases statewide on agricultural real estate had increased nearly 46 percent, almost twice the percentage increase as on residential properties...", and that "LB 440 attempt[ed] to help with this issue by reducing the value of agricultural land in the state aid to schools formula, which would translate into greater aid for school districts that have come to rely so heavily upon agricultural land for funding...", and "aid in alleviating some of the pressure on agricultural land as the funding sources for some schools." *Id.* at 12 (Statement of Jessica Kolterman on behalf of the Nebraska Farm Bureau).

While LB 440 was not advanced from the Education Committee, we believe the purposes articulated in support of that bill provide a reasonable basis for the proposed reduction to the percentage of agricultural and horticultural land to be used to calculate state aid to schools contained in LB 280. The effect of a decrease in the percentage of actual value of agricultural and horticultural land would be to decrease formula resources in determining state aid, which in turn would increase the amount of state aid allocated to schools as equalization aid. Equalized school districts may receive increased equalization aid, and the number of unequalized districts would be reduced. Given the substantial increase in the valuation of agricultural and horticultural lands statewide in recent years, which has outpaced increases in the valuation of other real property, utilizing a different, lower percentage of agricultural land value in the calculation of state aid is not arbitrary or unreasonable, as it is based on real substantial differences between such lands and other real property. Thus, reducing the value of agricultural and horticultural land, including land subject to special valuation, from the midpoint of the acceptable range for such property (72 percent) to 62.4 percent, while continuing to use the midpoint of the range for other real property (96 percent), in

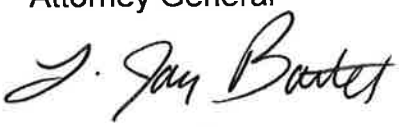
calculating state aid to schools, is not an improper classification in violation of the special legislation clause.

CONCLUSION

The Nebraska Constitution provides that "[t]he Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years." Neb. Const. art. VII, § 1. "What methods and what means should be adopted in order to furnish free instruction to the children of the state has been left by the constitution to the legislature." *Affholder v. State,* 51 Neb. 91, 93, 70 N.W. 544, 545 (1897). "Nebraska's constitutional history shows that the people of Nebraska have repeatedly left school funding decisions to the Legislature's discretion." *Nebraska Coalition for Educational Equity and Adequacy v. Heineman,* 273 Neb. 531, 550, 731 N.W.2d 164, 179 (2007). Given the broad discretion afforded the Legislature in determining the proper means to fund our schools, we conclude that, for purposes of calculating state aid to schools, LB 280's proposed reduction to the value of agricultural and horticultural land, including land subject to special valuation, from the midpoint of the acceptable range for such property (72 percent) to 62.4 percent, while continuing to use the midpoint of the range for other real property (96 percent), does not result in an improper classification in violation of the special legislation clause.

Very truly yours,

DOUG PETERSON
Attorney General



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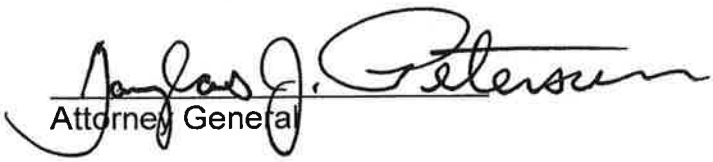

Attorney General

pc Patrick J. O'Donnell
Clerk of the Nebraska Legislature

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