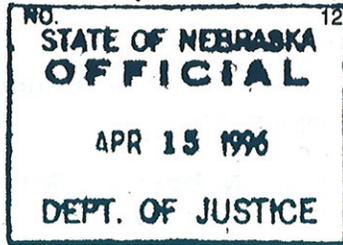




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**DON STENBERG**  
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**STEVE GRASZ**  
**Laurie Smith Camp**  
DEPUTY ATTORNEYS GENERAL

DATE: April 12, 1996

SUBJECT: Application of Statutory Amendment to  
Existing Ethanol Production Credit Agreements

REQUESTED BY: Senator Leland Klein

WRITTEN BY: Don Stenberg, Attorney General  
Steve Grasz, Deputy Attorney General

You have requested an Attorney General's Opinion on the validity of AM4268, an amendment to LB 1121. Specifically, you have questioned whether the amendment can constitutionally be applied retroactively to existing ethanol production contracts.

AM4268 to LB 1121 provides that "No credit shall be given on ethanol produced for or sold for use in the production of distilled spirits." Thus, AM4268 places an additional restriction on ethanol producers to qualify for production credits.

This office has addressed nearly identical questions previously. See Op. Att'y Gen. No. 95043 (May 30, 1995) and Op. Att'y Gen. No. 80 (April 24, 1981). For the reasons stated in those opinions, we conclude that AM4268 to LB 1121 must be construed to apply only prospectively, and may not be applied retroactively to existing ethanol production credit agreements between ethanol producers and the Nebraska Department of Revenue.

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Senator Leland Klein  
April 12, 1996  
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The Amendment does not state that it is intended to apply retroactively, and a statute may not operate retroactively where it would impair the obligation of a contract or interfere with a vested right. *State ex rel. Douglas v. Nebraska Mortgage Finance Fund*, 204 Neb. 445, 464, 283 Neb. 2d 12 (1979).

Sincerely yours,

DON STENBERG  
Attorney General

  
L. Steven Grasz  
Deputy Attorney General

APPROVED BY:

  
\_\_\_\_\_  
Attorney General

03-52-18