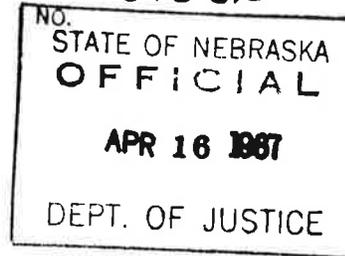


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

# 87052



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: April 16, 1987

RE: Constitutionality of LB 642; Constitutionality of the Delegation of Legislative Authority in Establishing Administrative Fees

REQUESTED BY: Senator Don Wesely  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
Dale A. Comer, Assistant Attorney General

You have requested our opinion as to the constitutionality of LB 642. That bill would replace those portions of Neb.Rev.Stat. §8-602 which set out specific fees for services rendered by the Department of Banking and Finance with language which states, "The Director of Banking and Finance shall charge and collect fees for services rendered by the Department of Banking and Finance in amounts as provided by the Director by rules and regulations." You inquire as to whether this is an unconstitutional delegation of legislative authority in establishing administrative fees.

In several previous instances, this office has indicated that an administrative agency may not be allowed to set administrative fees without sufficient standards or guidelines from the Legislature concerning the determination of the amount of those fees. Opinion of the Attorney General No. 201, February 19, 1982; Opinion of the Attorney General No. 134, August 12, 1981; Report of the Attorney General, 1975-1976, No. 10 at 11; Report of the Attorney General, 1971-1972, No. 134 at 305. These opinions are all based, at least in part, upon the notion that any grant of authority to an administrative agency by the Legislature must be administered in accordance with adequate standards and guidelines prescribed in the legislative act. Gillette Dairy, Inc. v. Nebraska Dairy Products Board, 192 Neb. 89, 219 N.W.2d 214 (1974); School District No. 39 of Washington County v. Decker, 159 Neb. 693, 68 N.W.2d 354 (1955).

It appears to us that LB 642 establishes no guidelines whatsoever for the determination of fees by the Director of Banking and Finance. Indeed, the bill does not even require

L. Jay Bartel  
Martel J. Bundy  
Janie C. Castaneda  
Dale A. Comer  
Laura L. Freppel

Lynne R. Fritz  
Yvonne E. Gates  
Jill Gradwohl  
Royce N. Harper  
William L. Howland

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John R. Thompson  
Susan M. Ugai  
Linda L. Willard

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those fees to be "reasonable" or "appropriate." As a result, it is our view that LB 642 involves an unconstitutional delegation of legislative authority since it does not contain adequate guidelines and standards for the determination of service fees by the Director of Banking and Finance.

Sincerely yours,

ROBERT M. SPIRE  
Attorney General

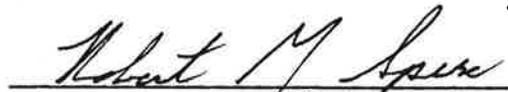


Dale A. Comer  
Assistant Attorney General

DAC/bae

cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED BY:

  
Robert M. Spire  
Attorney General