

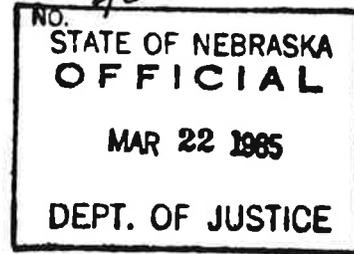
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

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

March 21, 1985



Senator R. Wiley Remmers  
Nebraska State Legislature  
State Capitol  
Lincoln, Nebraska 68409

Dear Senator Remmers:

This is in response to your letter of March 7, 1985, concerning your proposed amendment to LB 158. This amendment would provide as follows:

(4) A buyer who purchases farm products, including livestock, or a person who sells farm products, including livestock, for another for a fee or commission shall pay the seller the total purchase price by means of a check payable to such seller and a lending institution who shall be specified by such seller, and if the lending institution authorizes the cashing of such check, such buyer or person shall be free of any security interest in such farm products, including livestock, held by any security interest holder up to the amount of the check. Any such buyer or person who does not include the name of a lending institution on such check shall take such farm products, including livestock, subject to any valid security interest which may exist in such farm products, including livestock.

As we read this amendment, there is no requirement that the designated financial institution be the actual security interest holder in the property. Likewise, there is nothing in the amendment which provides that this designated financial institution actually assumes responsibility for any security interest in the property if it cashes such check. In effect, this legislation would extinguish an otherwise valid security interest in the property sold without any knowledge on behalf of

L. Jay Bartel  
John M. Boehm  
Dele D. Brodkey  
J. Kirk Brown  
Martel J. Bundy  
Dale A. Corner

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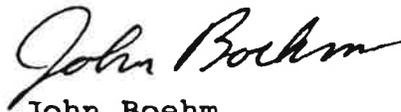
Bernard L. Packett  
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John R. Thompson  
Linda L. Willard

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the security interest holder. Such a result would undoubtedly be an impermissible impairment of the obligation of contract under Article I, Section 16, of the Nebraska Constitution and the taking of property without due process of law.

Sincerely,

ROBERT M. SPIRE  
Attorney General



John Boehm  
Assistant Attorney General

JB:ejg

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