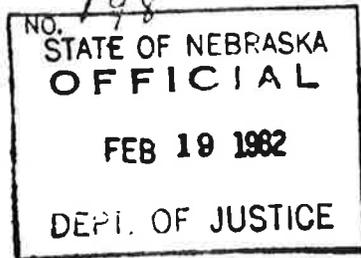


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



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Attorney General
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Deputy Attorney General

February 18, 1982

Senator Samuel K. Cullan
Nebraska State Legislature
State Capitol, Room 807
Lincoln, Nebraska 68509

Dear Senator Cullan:

You have asked whether section 5 of amendments to LB 378 is an improper delegation of legislative authority. We have concluded it is not as discussed below.

That section would require the Department of Health to vary the base amount of a capital expenditure which is subject to certificate of need review by reference to the Department of Commerce Composite Construction Cost Index. (The annual composite index represents the ratio between the annual value of new construction put in place in current dollars and the comparable annual total in 1972 dollars.)

This is not a case of incorporating by reference an existing law or regulation which the Legislature can do. State v. Workman, 186 Neb. 467 (1971), and Anderson v. Tiemann, 182 Neb. 393 (1967). It is not a case of incorporating by reference a model code which the Legislature cannot do because a court cannot take judicial notice of it. Lincoln Dairy Company v. Finigan, 170 Neb. 777 (1960). It is not a case where the department may decide itself whether to apply the index, thus leaving uncertain what the law is as was the case in Lincoln Dairy Company, above.

This is a case where the Legislature is making a law to become operative on the ascertainment of a fact upon which the law intends to make its action depend. It can delegate to an administrative agency the power to ascertain such a fact. Lennox v. Housing Authority of the City of Omaha, 137 Neb. 582 (1940).

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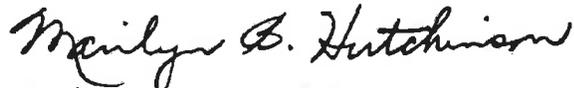
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Senator Samuel K. Cullan
February 18, 1982
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The index is published periodically by the Department of Commerce in "Survey of Current Business." Thus a court can take judicial notice of it because it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. See, Neb.Rev.Stat. §27-201(2) (b) (Reissue 1979), and Grubaugh v. State ex rel. State Real Estate Commission, 202 Neb. 75 (1979).

Sincerely yours,

PAUL L. DOUGLAS
Attorney General



Marilyn B. Hutchinson
Assistant Attorney General

MBH:ejg

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