

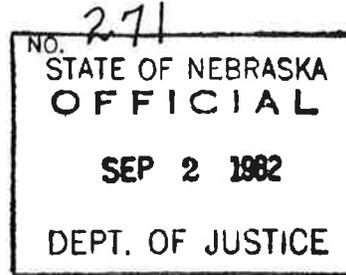
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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September 1, 1982



Senator Karen Kilgarin
Nebraska State Legislature
State Capitol
Lincoln, NE 68509

Dear Senator Kilgarin:

This will acknowledge our receipt of your recent letter which pertains to a letter you wrote this office on May 7, 1982, in which you asked three questions which pertain to alleged altering of the practice of "open admissions" at the University of Nebraska. The same is hereinafter discussed.

Perhaps some preliminary remarks are in order. First, the writer of this letter is the person to whom your letter of May 7, 1982, was assigned. Shortly after receiving that letter, I called your office and in your absence told a member of your staff that there had been a death in my family and therefore I would appreciate an extension of time if a formal response were expected. At that time, I also told that member of your staff that the University of Nebraska had not altered the practice of "open admissions" and therefore the questions presented were technically moot and consequently I would hold your request, in the event you had no objections, a reasonable time to ascertain the extent, if any, the admissions practices were subsequently altered. Recently, a member of your staff called and I informed the caller that to my knowledge the admissions policy of the University of Nebraska had not been altered but I would check on the same and report my findings. Shortly thereafter, we received your recent letter.

As of the date of this letter, we wish to inform you that the admissions policy of the University of Nebraska have yet to be altered. Thus, technically your questions are still moot. However, it is our understanding that the same is on the agenda of the Board of Regents at its meeting on September 10, 1982. It is also our understanding that the proposed admissions policy to be considered at that time is not one of open or closed admissions per se or one based on predetermined grades a student must obtain in high school or one based upon the student's scholastic ranking among other graduates of the same or different high schools. Rather, it is our understanding the

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proposed admissions policy to be considered on September 10, 1982, would merely require incoming freshman students to have successfully completed certain high school subjects. It is also our understanding if that admissions policy is adopted, it would not be effective until the fall term of 1986. While the three questions you have asked are technically moot, we can offer you the following general comments which pertain thereto.

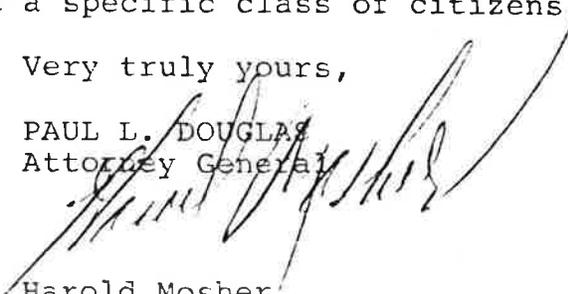
First, you ask if the Legislature could constitutionally amend Neb.Rev.Stat. §85-112 (Reissue 1981) to provide a specific admissions policy. Our opinion is not entirely free of doubt but it would appear that it could. Whether the second sentence in section 1 of Article VII of the Constitution of Nebraska would have any bearing thereon would have to be determined in light of any such amendment.

Second, you ask if a private citizen could sue the University of Nebraska to contest the legality of its admissions policy. The answer to this question depends on whether the private citizen has standing. The law of standing is very complex and without knowing what legal qualifications the specific private citizen possesses and what legal issues such a person would attempt to assert, we cannot answer this question. We can tell you that it is doubtful if the University of Nebraska could be "taken to court" by a "state agency, board or commission which in its statutory charter is not specifically delegated the power to sue."

Third, you inquire of the constitutionality of any admissions policy enforced by a state university which could be shown to significantly place certain classes of citizens in an unfair advantage in seeking admission to the university. The critical unknown fact here is the undisclosed "unfair advantage" such an admissions policy would place on certain classes of citizens. In other words, class legislation per se is not ipso facto unconstitutional. On the other hand, class legislation may be unconstitutional depending upon the specific governmental statute or regulation and how or in what manner the same discriminates against a specific class of citizens.

Very truly yours,

PAUL L. DOUGLAS
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HM/cmb/wl

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