STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#94016

STATE OF NEBRASKA
OFFICIAL
MAR 18 1994
DEPT. OF JUSTICE

DATE: March 16, 1994

SUBJECT: Constitutionality of AM3115 to LB 1207: Special Legislation

REQUESTED BY: Senator Stan Schellpeper
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Linda L. Willard, Assistant Attorney General

You have inquired whether AM3115 to LB 1207 is unconstitutional as being special legislation. Article III, § 18, of the Constitution of the State of Nebraska prohibits the Legislature from passing local or special legislation in any of several enumerated areas.

AM3115 states:

> Any sanitary and improvement district which is located in whole or in part within a county having a population of under fifty thousand inhabitants and which district includes real property located within one mile of the boundary of a solid waste disposal site for which a permit application is pending or for which a permit has been issued pursuant to section 13-2036 shall obtain the approval of the governing body of any county, municipality, or agency which has applied for or which is a holder of such permit prior to entering into any contract or agreement for or otherwise providing for building, reconstructing, purchasing, or otherwise acquiring or providing any improvements or facilities pursuant to section 31-708, 31-727, or 31-744, and prior to the acquisition of any property pursuant to section 31-712, 31-714, 31-736, 31-737, or 31-738.

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> For purposes of this section, county, municipality, and agency shall have the definitions provided in the Integrated Solid Waste Management Act.

In ***Haman v. Marsh***, 237 Neb. 699, 709, 467 N.W.2d 836 (1991), the Nebraska Supreme Court held:

> By definition, a legislative act is general, and not special, if it operates alike on all persons of a class or on persons who are brought within the relations and circumstances provided for and if the classification so adopted by the Legislature has a basis in reason and is not purely arbitrary. . . . A legislative act that applies only to particular individuals or things of a class is special legislation.

The ***Haman*** decision further cites to ***Madison Metropolitan Sewerage District v. Stein***, 47 Wis.2d 349, 177 N.W.2d 131, 137 (1970), as authority for its analysis. The ***Madison Metropolitan*** case states:

> It is not required that all general laws shall be equally general. A law legislating for a class is a general law when it is for a class "requiring legislation peculiar to itself in the matter covered by the law." A law relating to particular persons or things ***as a class*** is said to be general; while a law relating to particular persons or things ***of a class*** is deemed special and private. Whether such laws are to be deemed general laws or special laws depends very much upon whether the classification is appropriate.

According to legislative testimony, the amendment in question currently applies to only one Sanitary and Improvement District (SID) in the state. There is nothing to indicate that the class to which this legislation applies is a closed class. Specifically, it relates to a class of SIDs. Although the legislation refers to sites "for which a permit application is pending or for which a permit has been issued," the legislation does not limit the class to those sites with permits or pending permits as of a specific date. Such a date specific classification might arguably create a special class for the only existing SID eligible for the class. All SIDs meeting the requirements now or later could become a part of the class. Neither does the legislation relate to particular persons or things of a class of SIDs which would make it special legislation as set out in the cases cited above. It applies equally to all SIDs similarly situated now or in the future.

It is our conclusion that AM3115 to LB 1207 is not special legislation as that term is used in the State Constitution and as it has been defined by the Nebraska Supreme Court.

Sincerely,

DON STENBERG
Attorney General

Linda L. Willard
Assistant Attorney General

28-12-14.op

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

Approved by:

Attorney General