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#92006
STATE OF NEBRASKA
OFFICIAL
JAN 10 1992
DEPT. OF JUSTICE

DATE: January 10, 1992

SUBJECT: Jurisdiction of the Nebraska State Patrol on State Highway Interstate 80 in Omaha

REQUESTED BY: Senator Scott Moore, Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Warren D. Lichty, Jr., Assistant Attorney General

This is in response to your inquiry regarding Amendment No. 1165 to LB 377 now pending in the Nebraska State Legislature. This amendment purports until January 1, 1992, to limit the jurisdiction of the Nebraska State Patrol over freeways in metropolitan cities to carrier enforcement activities. You ask two specific questions. The first is:

> "1) If Am. 1165 were adopted to Neb.Rev.Stat. Sec. 81-2006 who would have traffic jurisdiction on the Interstate system within the jurisdictional limits of the City of Omaha for the period affected by the amendment?"

It would appear that the answer, during such past period, is any law enforcement agency with power to arrest for traffic violations, such as local police, sheriff's officers, excepting the patrol.

At first blush, one might think this constitutes special legislation, but Article III, Section 18, Constitution of the State of Nebraska, which prohibits local or special laws in certain instances, appears not to cover this situation. This is is because no subparagraph of Article III, Section 18, appears to cover or relate to the situation raised by your amendment. The prohibitions against special legislation regulating the practice of courts of justice or affecting the jurisdiction and duties of justice of the peace, police magistrates and constables do not apply. Limiting the arrest powers of the State Patrol does not

regulate the practice courts of justice. And since there are no longer justices of the peace or police magistrates, there an no possible effect there. Constables are now authorized and defined in Neb.Rev.Stat. §§25-2229 to 25-2239, and are given no other duties or authority than that of serving process. Since they appear to have no authority over motor vehicles and traffic, we do not believe this subsection would prohibit your amendment. Nor would limiting the patrol's power of arrest change the venue in any case. Therefore, since none of the subsections of Section 18 seem to address themselves to the authority of the patrol, we do not believe your amendment constitutes special legislation.

Your second question is:

> "2) Who is responsible for traffic jurisdiction on the Interstate system within the jurisdictional limits of the city of Omaha under Neb. Rev. Stat. Sec. 81-2006 and any other relevant state law as it currently reads?"

You have indicated that you have need of this information in connection with other proposed legislation you are considering. This is a very difficult question inasmuch as a great number of statutory sections have some relevance thereto, either by direct reference, cross-reference, or circular reference.

Neb.Rev.Stat. §81-2006, the section which you anticipate amending, gives the State Patrol, sheriffs, police officers, or any other local peace officers, concurrent jurisdiction.

Neb.Rev.Stat. §81-2005 directs the State Patrol and all other peace officers mentioned in Section 39-6192, except carrier enforcement officers, to have the power of peace officers for the purpose of enforcing the provisions of ". . .law regulating the operation of vehicles or the use of the highways," together with arrest power therefor and certain other specific powers. The peace officers mentioned in section 39-6192 are, in addition to the State Patrol, all sheriffs and all deputy sheriffs of the several counties, all chiefs of police, and all policemen of all cities, all village marshals in all villages throughout the State of Nebraska. Although that section includes "marshals in all villages", the term "in all villages" would appear to be a limitation which excludes them from traffic jurisdiction on the interstate in the City of Omaha. There is a caveat, however, since section 39-6,192 indicates that the aforesaid officers therein mentioned are directed and have the duty to enforce the provisions of sections 39-669.21, 39-6,127, 39-6,133, 39-6,138, 39-6,140, 39-6,192, and 81-2,005, and are directed to exercise all the powers recited in section 81-2005. Section 39-669.21 is

a violation section with a penalty for violation of sections 39-6,127, 39-6,133, 39-6,138, 39-6,140, 39-6,192 and 81-2,005. You will note that these are the sections cited in section 39-6,192, hence our reference to circular referencing of the statutes. Section 39-6,127 is a requirement for clearance lights on certain vehicles, section 39-6,133 is a requirement for brakes, section 39-6,138 is the requirement for head and tail lights on vehicles, section 39-6,140 is the section requiring headlights to be properly adjusted, 39-6,192 has already been mentioned, and section 81-2,005 is the section mentioned above at the beginning of this discourse. Since subparts (1) and (2) of section 81-2,005 give the mentioned officers power to enforce laws regulating the operation of vehicles and use of the highways and to make arrests therefor, it would appear to be unimportant that the officers mentioned in section 39-6,192 are only given power under 39-6,192 to enforce certain laws relating to equipment on vehicles. It is, however, a caveat that which must be raised, given the intention of amendment 1165 to LB 377 to remove jurisdiction over the Omaha interstate from the Nebraska State Patrol.

As to cities of the metropolitan class specifically, Neb.Rev.Stat. §14-603 gives the Chief of Police and officers authority for service of process and cases for violations of city ordinances authority coextensive with the county. Section 14-604 gives the Chief of Police authority to pursue and arrest any person fleeing from justice in any part of the State. Section 14-605 gives the Chief of Police like powers and like responsibilities as sheriffs in similar cases. And section 14-606 gives each policeman the same powers as constables in arresting all offenders against the laws of the State. They may also arrest all offenders against the ordinances of the city. There is a problem with Section 14-606, since, as previously stated, constables are not given power of arrest under current statutes.

The specific authority of sheriffs is contained in Neb.Rev.Stat. §23-1710 which provides that it is the duty of the sheriff to preserve the peace in his county, to ferret out crime, to apprehend and arrest all criminals.

Also, Neb.Rev.Stat. §39-6,188 contains the following statement:

> "It shall be the duty of the sheriffs of the several counties and other police officials to enforce the provisions of sections 39-6,123, 39-6,125, 39-6,126, 39-6,177 to 39-6,187, 60-301 to 60-343, and 79-488."

Of this group, the only section of interest to us is section 39-6,183, which, in part, provides:

> Any person operating any motor vehicle. . .in violation of any of the provisions of section 39-662, 39-663, 39-666, or 39-6,123. . .shall be deemed guilty of a traffic infraction. . . .

Sections 39-662, 663, and 666 are the speed limit statutes. Therefore, this section, in our opinion, is another section indicating that police departments and sheriffs are to enforce the speeding laws of the State of Nebraska. Therefore, we conclude that the agencies with duties to enforce traffic laws on the interstate in Omaha are the State Patrol, sheriff's office, and City police department.

Other sections, such as Neb.Rev.Stat. §29-401, may give additional authority, which would encompass traffic violations, but do not necessarily make it a duty to enforce such provisions. Therefore, after extensive manual and computer research of the statutes, we believe the aforesaid statutes are the only ones making it a responsibility of law enforcement offices and officers to enforce traffic regulations.

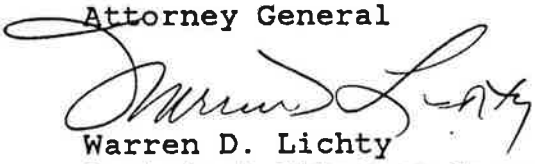
We fully understand, Senator, that the legislature has absolute power to define and redefine the duties of State agencies and officers, but we also believe it to be our duty to make the following comments for your consideration. The Department of Roads is committed to the federal government for a certain minimum standard of law enforcement on our federal-aid highways. Care should be taken to be sure that removal of any authority for duty of traffic law enforcement does not violate these minimums, thereby endangering future federal highway aid for construction and maintenance. See Title 23 U.S.C. §141 requiring states to certify to the U.S. Secretary of Transportation that they are enforcing certain laws.

Second, consideration should be given to the fact that depriving the State Patrol of authority on the interstate in Omaha might create a "safe haven" to which violators could flee when being pursued by the patrol, thus preventing their arrest.

We hope that this necessarily involved response will be of assistance to you.

Sincerely,

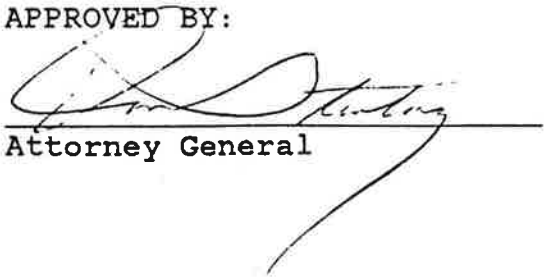
DON STENBERG
Attorney General



Warren D. Lichty
Assistant Attorney General

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

APPROVED BY:



Attorney General