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STATE OF NEBRASKA
OFFICIAL
MAR 2 1992
DEPT. OF JUSTICE

DATE: February 26, 1992

SUBJECT: Constitutionality of LB 1279, master plans for road construction

REQUESTED BY: Senator Carol McBride Pirsch, Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Gary R. Welch, Assistant Attorney General

This is in response to your inquiry regarding LB 1279, and the question of whether it violates Article III, Section 18 of the Constitution of the State of Nebraska, or more specifically, that portion of the Constitution which states:

> The Legislature shall not pass local or special laws in any of the following cases, that is to say: . . . Laying out, opening, altering and working roads or highways.

Article III, Section 18 of the Nebraska Constitution is clear that the Legislature is "prohibited" from passing local or special laws in "Laying out, opening, altering and working roads as highways."

> The term to "lay out", when used with reference to highways, has been from the earliest times, the appropriate expression for locating and establishing a new highway.

Foster v. City of Boston Park Commissioners, 133 Mass. 321; Borrowdale v. Board of Commissioners, 23 N.M. 1, 163 P.721; French v. Lewis & Clark County, 87 Mont. 448, 288 P.455.

> The laying out of a highway has been construed to embrace all the measures for the creation or establishment of the way.

Wolcall v. Pond, 19 Conn. 597, 601; Town of Woodbridge v. Merwin, 27 Conn. Supp. 469, 244 A.2d 57 (1968).

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The American Heritage Dictionary definition of "lay out" is:

> The laying out of something; the arrangement, plan or structuring of something laid out; overall picture or form.

Ballentines Law Dictionary defines "lay out" as "locating or establishing a new highway."

We find that any establishment of a corridor for a highway falls within the prohibition of passing local or special laws in laying out of highways. The establishment of a set corridor from one town to another or one point to another to the exclusion of other towns or points is special and local. Where the term "laying out" encompasses "all the measures for the creation or establishment of the way," the laying out of a specific corridor must fall within that meaning.

The bill, as written, is directory in its nature. It sets out a master plan entitled "Vision 20/20" prepared by Trans/Mid-America dated November 4, 1991. It sets limits of three-mile wide corridors, and it sets out 43 different, separate corridors as a part of its direction.

The proposed legislation also directs a corridor with such specificity that is directing the Department of Roads where it will put its highways across the State. We believe that the legislation is not advisory. It demands compliance with laying out and directing where certain highways will be. Article III, Section 18, of the Nebraska Constitution, does not allow the Legislature to pass special or local laws in laying out highways or roads. Therefore, we believe that the portion that is mandatory is unconstitutional.

Sincerely,

DON STENBERG
Attorney General

Gary R. Welch
Assistant Attorney General

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

APPROVED BY:

Attorney General