STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#92033

STATE OF NEBRASKA
OFFICIAL
MAR 3 1992
DEPT. OF JUSTICE

DATE: February 28, 1992

SUBJECT: Exemption from Property Tax of Household Goods and Intangible Property.

REQUESTED BY: Senator George Coordsen
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to whether, if LR 219CA is not placed before the voters and passed by the electorate, personal property in the nature of household goods and intangible property must be subjected to property tax. For the reasons outlined below, we believe that, irrespective of whether LR 219CA is adopted, such personal property may remain exempt from property taxation under existing constitutional provisions.

In 1964, article VIII, § 1, of the Nebraska Constitution, was amended to include the following language: "Taxes, uniform as to class of property or the ownership or use thereof may be levied by valuation <u>or otherwise</u> upon classes of intangible property as the Legislature may determine. . . ." (Emphasis added).

In a previous opinion, this office concluded that the history surrounding the adoption of this amendment demonstrated that the Legislature "could. . . adopt an income tax and then repeal the present statutes which provide for an ad valorem tax on intangibles." <u>Report of Attorney General 1967-68</u>, Opinion No. 13, 21-22. The Legislature, of course, adopted the Nebraska Revenue Act of 1967, providing for an income tax, and, consistent with our opinion, repealed the statutory provisions establishing an ad valorem tax on intangibles. <u>See</u> 1967 Neb. Laws, LB 144. LR 219CA

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does not propose to alter this particular provision of article VIII, § 1, and we see no reason to deviate from our prior opinion regarding the validity of the Legislature's action consistent with the 1964 amendment.

Furthermore, we point out that the recent Nebraska Supreme Court decisions addressing the constitutionality of the present framework relating to property taxation, including MAPCO Ammonia Pipeline, Inc. v. State Bd. of Equal., 238 Neb. 565, 471 N.W.2d 734 (1991) ["MAPCO"], have focused on the "uniformity clause" of Neb. Const. art. VIII, § 1, which provides that "[t]axes shall be levied by valuation uniformly and proportionately upon all tangible property. . . ." (Emphasis added). Thus, to the extent your question is prompted by concern as to the implications of the court's recent decisions addressing the uniformity clause of article VIII, § 1, with respect to the taxation of intangibles, this portion of the Constitution is clearly inapplicable, as it pertains only to the taxation of tangible property.

With respect to your second question, pertaining to the validity of the exemption of household goods, Neb. Const. art. VIII, § 2, presently provides: "Household goods and personal effects, as defined by law, may be exempted from taxation in whole or in part, as may be provided by general law, . . ." LR 219CA, as proposed, would generally retain this same constitutional language.

Based on our reading of the court's recent decisions addressing the validity of personal property tax exemptions, we do not believe that the exemption of household goods from property taxation is impermissible under current Nebraska constitutional provisions. In MAPCO, the court noted that "household goods and certain property owned by non-profit religious, charitable, horticultural or cemetery organizations is exempt from taxation." 238 Neb. at 584, 471 N.W.2d at 746. The court further stated that "[t]he validity of these exemptions has not been challenged in this court and, to our knowledge, has not been challenged in federal court." Id. The court continued by noting that specific exemptions for agricultural income-producing machinery and equipment, business inventories, and agricultural products and inventories, exempted under § 77-202(6)-(9), had been found to violate § 306(1)(d) of the federal 4-R Act as resulting in discriminatory taxation of railroad rolling stock in Trailer Train Co. v. Leuenberger, 885 F.2d 415 (8th Cir. 1988), cert. denied sub nom Boehm v. Trailer Train Co., 490 U.S. 1066 (1989), and concluded by holding "the property tax exemptions enumerated in § 77-202(6)-(9). . . unconstitutional under Neb. Const. art. VIII, § 1, in that they prevent the levy of taxes `by valuation uniformly and proportionately upon all tangible property and franchises.'" 238 Neb. at 584-85, 471 N.W.2d at 746-47.

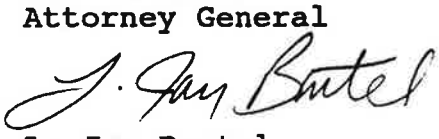
To the extent the court's holding that the exemptions of personal property under § 77-202(6)-(9) were unconstitutional under state law was based on the incompatibility of such exemptions with the taxation of railroad personal property under § 306 of the 4-R Act, no similar concern exists relative to the exemption of "household goods," as the relevant comparison class for purposes of assessing discriminatory property taxation under the 4-R Act is limited to "commercial and industrial property." The definition of "commercial and industrial property" under § 306(3)(c) pertains only to certain real or personal property "devoted to a commercial or industrial use. . . ." Household goods, of course, would not fall within this definition of "commercial and industrial property."

As noted, the court in MAPCO made reference to the exemption of "household goods" (as well as exemptions for property of religious, charitable, or educational institutions) as not having been challenged in "federal court." It is evident this statement referred to federal court challenges to Nebraska's system of taxing personal property under the 4-R Act. As the exemption of "household goods" (as well as exemptions for the property of religious, charitable, or educational institutions) is irrelevant under the 4-R Act, there is no basis to conclude that the decision in MAPCO calls into question the constitutionality of the exemption of household goods under current Nebraska constitutional provisions. See also Natural Gas Pipeline Co. v. State Bd. of Equal., 237 Neb. 357, 374, 466 N.W.2d 461, 472 (1991) (White and Fahrnbruch, J. J., concurring) (noting reasonableness of classification and exemption of property "whose tax proceeds would not justify the costs of collection," including "household goods.").

**In sum, it is our opinion that, irrespective of the adoption of LR 219CA, both household goods and intangibles may remain exempt from property taxation under current Nebraska constitutional provisions.**

Very truly yours,

DON STENBERG
Attorney General



L. Jay Bartel
Assistant Attorney General

cc: Patrick O'Donnell
Clerk of Legislature

7-318-7.11

APPROVED BY:

Don Stenberg, Attorney General