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STATE OF NEBRASKA
OFFICIAL
APR 13 1992
DEPT. OF JUSTICE

DATE: April 13, 1992

SUBJECT: LB 719A, as Amended - Constitutionality of Granting Authority to the State Tax Commissioner to Adjust Railroad and Car Line Property Tax Valuations.

REQUESTED BY: Senator Loran Schmit
Nebraska State Legislature

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

You have requested our opinion regarding the constitutionality of a recent amendment to LB 719A. This amendment, which is contained in section 219 of the bill, would allow the State Tax Commissioner to adjust the value of railroad and car line properties for tax purposes to "the percentage of the comparable taxable commercial and industrial property pursuant to federal statute or Nebraska federal court decisions applicable thereto." Your sole question is whether this provision establishes an unconstitutional delegation of legislative authority to the State Tax Commissioner.

As a general rule, the Legislature may not delegate legislative authority to an administrative agency or official. State v. Sprague, 213 Neb. 581, 330 N.W.2d 739 (1983); Laverty v. Cochrane, 132 Neb. 118, 271 N.W. 354 (1937). The Legislature may, however, grant general powers to an agency or official and delegate to such agency or official the power and duty to administer and enforce an act. State v. Sprague, supra; State ex rel. Douglas v. Nebraska Mortgage Finance Fund, 204 Neb. 445, 283 N.W.2d 12 (1979).

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"[T]he legislature is clothed with power to delegate to administrative boards and agencies of the state the power of ascertaining facts upon which the laws are to be applied and enforced. It may also authorize the doing of specific acts necessary to the furtherance of the purposes of the act." Lennox v. Housing Authority of the City of Omaha, 137 Neb. 582, 592, 290 N.W. 451, 458 (1940). "[W]here the Legislature has provided reasonable limitations and standards for carrying out the delegated duties, no unconstitutional delegation of legislative authority exists." In re Application U-2, 226 Neb. 594, 607, 413 N.W.2d 290, 299 (1987).

In State ex rel Douglas v. Nebraska Mortgage Finance Fund, supra, the Nebraska Supreme Court, discussing the requirement that the Legislature provide sufficient standards to guide the exercise of powers granted to an administrative agency, stated:

> The question of how far the Legislature should go in filling in the details of the standards which an administrative agency is to apply raises large issues of policy in which the Legislature has a wide discretion, and the court should be reluctant to interfere with such discretion. Such standards in conferring discretionary power upon an administrative agency must be reasonably adequate, sufficient, and definite for the guidance of the agency and the exercise of the power conferred upon it and must also be sufficient to enable those affected to know their rights and obligations. 1 Am.Jur.2d, Administrative Law, § 117, p. 923. The modern tendency is to be more liberal in permitting grants of discretion to an administrative agency in order to facilitate the administration of laws as the complexity of administration and governmental conditions increases. 1 Am.Jur.2d, Administrative Law, § 118, p.925

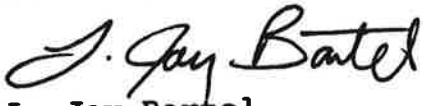
204 Neb. at 465, 283 N.W.2d at 24.

Judged by these standards, it is our opinion that the authority granted to the State Tax Commissioner to adjust railroad and car line property valuations under section 219 of LB 719A does not represent an unconstitutional delegation of authority to the Tax Commissioner by the Legislature. This section does not propose to grant to the Tax Commissioner unlimited discretion in adjusting railroad or car line property values for tax purposes. Rather, it mandates that the Tax Commissioner calculate defined ratios involving railroad and car line property and commercial and industrial property in determining the taxable value of railroads and car lines. The Tax Commissioner is permitted to adjust the values of railroad or car line properties to the percentage of comparable taxable commercial and industrial property only "[i]f

the ratio of the taxable value of railroad and car line personal or real property exceeds the ratio of the comparable taxable commercial and industrial property by more that five percent." LB 719A, § 219(2). This provision is obviously designed to permit the Tax Commissioner to adjust railroad or car line property values for purposes of compliance with Section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 [the "4-R Act"]. Under these circumstances, we believe that this provision prescribes adequate standards limiting the authority of the Tax Commissioner. Therefore, in response to your specific question, we conclude that the bill does not impermissibly delegate legislative authority to the Tax Commissioner.

Very truly yours,

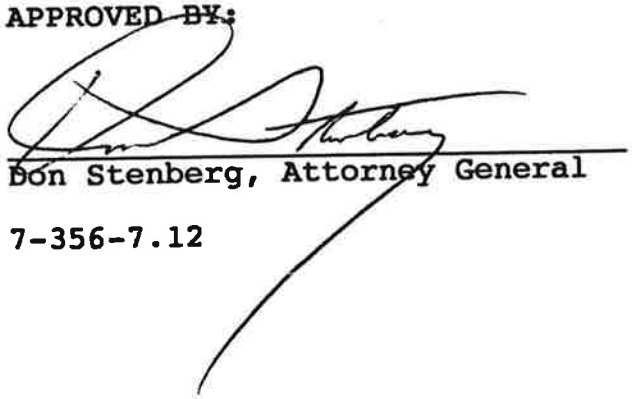
DON STENBERG
Attorney General



L. Jay Bartel
Assistant Attorney General

cc: Patrick O'Donnell
Clerk of the Legislature

APPROVED BY:



Don Stenberg, Attorney General

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