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NO.
STATE OF NEBRASKA
OFFICIAL
MAY 21 1992
DEPT. OF JUSTICE

DATE: May 21, 1992

SUBJECT: Reenactment of LB 1063

REQUESTED BY: Senator Rex Haberman
Nebraska State Legislature

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

In light of the conclusions reached in Attorney General Opinion No. 92064, April 27, 1992, you have requested our opinion regarding whether, should the Legislature be convened in special session for the purpose of reenacting LB 1063 or similar legislation following voter approval of LR 219CA, it would be necessary to reenact LB 1063 (or its equivalent) in its entirety.

Previously, we concluded that potential constitutional infirmities existed with respect to certain provisions of LB 1063. Specifically, we noted that a question existed as to whether the "alternative" provisions relating to the taxation of tangible personal property in 1992, conditioning the manner in which tangible personal property is to be taxed on whether an amendment to Article VIII of the Nebraska Constitution was adopted, could be held to establish an unconstitutional delegation of legislative authority to the electorate. Attorney General Opinion No. 92064, at 9-10. In addition, we determined that, while LR 219CA contained an express ratification clause purporting to validate legislation enacted during the 1992 regular legislative session, there was no guarantee that the courts would uphold the effectiveness of such an attempt to revitalize LB 1063, should it be determined that the statute was contrary to the Constitution when enacted. Id. at 10.

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Should the Legislature be convened in special session to consider addressing the potential constitutional defects associated with LB 1063 noted in our prior opinion, it could be argued that enacting legislation which eliminates the conditional provisions relating to property taxation may be sufficient to remedy the possible improper delegation of legislative authority contained in certain portions of the bill. We are concerned, however, that the "nonseverability" provision contained in § 211 of LB 1063 could, in the event of a constitutional challenge based on the alleged invalidity of the act when passed, lead to a declaration that those portions of the bill not replaced by new legislation enacted at a special session are unconstitutional.

Rather than adopting such a limited approach, it would appear prudent for the Legislature to reconsider the act in its entirety, and to reenact appropriate legislation addressing the constitutional concerns outlined previously as part of a complete act encompassing all provisions of LB 1063. Reconsideration and reenactment of the bill (or similar legislation) in its entirety, incorporating such changes as are necessary to remedy these potential infirmities, presents the safest and soundest approach should the Legislature be convened to address this subject.

We note that the Governor has not yet issued a proclamation calling the Legislature into special session pursuant to Article IV, Section 8 of the Nebraska Constitution, which provides:

> The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter upon no business except that for which they were called together.

The last portion of this constitutional provision places an express limitation on the power of the Legislature to act during a special session. In Arrow Club, Inc. v. Nebraska Liquor Control Commission, 177 Neb. 686, 689, 131 N.W.2d 134, 137 (1964), the court, discussing the nature of this limitation, stated:

> It is well established that the Legislature while in special session can transact no business except that for which it was called together. Chicago, B. & Q. R.R. Co. v. Wolfe, 61 Neb. 507, 86 N.W. 441. The proclamation may state the purpose for which the Legislature is convened in broad, general terms or it may limit the consideration to a specified phase of a general subject. The Legislature is free to determine in what manner the purpose shall be accomplished, but it must confine itself to the matters submitted to it by the proclamation.

Thus, the scope of the Legislature's authority to act during a special session is confined to the subject matter expressed in the Governor's proclamation. As no proclamation has been issued at the present time, we cannot advise you as to whether either of the options previously discussed (i.e., reenacting LB 1063 in whole or in part), would fall within the purview of any call which the Governor may eventually issue relating to this subject.

Very truly yours,

DON STENBERG
Attorney General

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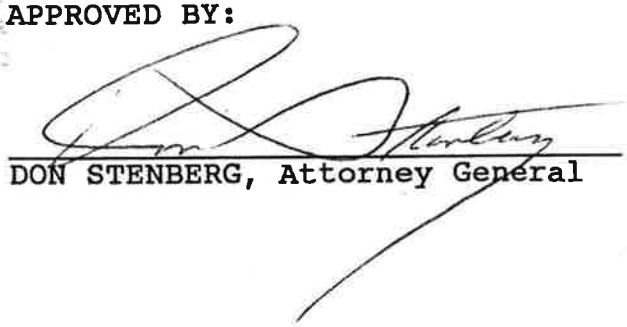
cc: Patrick O'Donnell
Clerk of Legislature

7-372-7.13

APPROVED BY:



DON STENBERG, Attorney General