

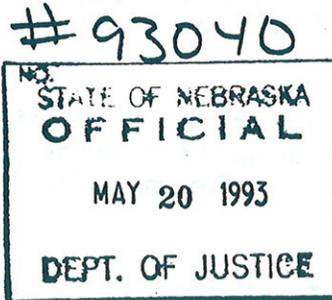


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DATE: May 18, 1993

SUBJECT: LB 507; Can the Legislature constitutionally establish requirements for future legislation projected to increase inmate population in correctional facilities in Nebraska?

REQUESTED BY: Senator Kate Witek  
 Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General  
 Dale A. Comer, Assistant Attorney General

LB 507 is a bill which establishes certain requirements for future legislation projected to increase the inmate population in state correctional facilities in Nebraska. When any legislation enacted after June 30, 1993, is projected to increase the total adult or juvenile population in such correctional institutions, Section 1 of LB 507 would require the Legislature to include estimates of the operating costs resulting from the increased adult or juvenile inmate population in the legislation. The estimates would be based upon fiscal notes prepared by the Legislative Fiscal Analyst with the assistance of the Department of Correctional Services.

Section (3) of LB 507 provides further:

The Legislature shall provide by specific itemized appropriation, for the fiscal year or years for which it can make valid appropriations, an amount sufficient to meet the cost indicated in the estimate contained in the legislation [projected to increase inmate populations] for such fiscal year or years. The appropriation shall be enacted in the same legislative session in which the

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Senator Kate Witek  
May 18, 1993  
Page -2-

legislation is enacted and shall be contained in a bill which does not contain appropriations for other programs.

Section (4) of LB 507 also provides,

Any legislation enacted after June 30, 1993, which does not include the estimates required by this section and is not accompanied by the required appropriation shall be null and void.

You have now requested our opinion on the constitutionality of LB 507. For the reasons stated below, we believe that LB 507 is unconstitutional under the pertinent provisions of the Nebraska Constitution.

LB 507 clearly purports to place strictures upon future Legislatures with respect to requirements for legislation which would increase the adult and juvenile inmate population in Nebraska's correctional facilities. The general rule concerning such attempts by one legislature to bind or restrict succeeding legislatures is set out in 82 C.J.S. *Statutes* § 9:

One legislature cannot bind a succeeding legislature or restrict or limit the power of its successors to enact legislation, except as to valid contracts entered into by it, and as to rights which have actually vested under its acts, and no action by one branch of the legislature can bind a subsequent session of the same branch.

This statement of the rule is amply supported by cases from a number of jurisdictions. See *Newton v. State*, 375 So.2d 1245 (Ala. Crim. App. 1979); *Maine State Housing Authority v. Depositors Trust Company*, 278 A.2d 699 (Me. 1971); *Frost v. State*, 172 N.W.2d 575 (Iowa 1969); *Village of North Atlanta v. Cook*, 219 Ga. 316, 133 S.E.2d 585 (1963); *Atlas v. Wayne County*, 281 Mich. 596, 275 N.W. 507 (1937); *Iowa-Nebraska Light & Power Co. v. City of Villisca*, 220 Iowa 238, 261 N.W. 423 (1935); *Harsha v. City of Detroit* 261 Mich. 586, 246 N.W. 849 (1933). As stated in the *Cook* case from Georgia, the rule is as follows:

One Legislature cannot lawfully provide that, whenever a subsequent Legislature enacts a statute with reference to a given subject, such statute shall embrace certain specified provisions. It cannot tie the hands of its successors, or impose upon them conditions with reference to subjects upon which they have equal power to legislate.

*Village of North Atlanta v. Cook*, 219 Ga. at 320, 321, 133 S.E.2d at 589. In the *Maine State Housing Authority* case, *supra*, the

Senator Kate Witek  
May 18, 1993  
Page -3-

court also specifically indicated that one legislature cannot impose a legal obligation to appropriate money on succeeding legislatures.

There are no Nebraska cases which specifically adopt the general rule stated above. However, the general rule appears to be grounded upon the constitutional power of the Legislature to legislate. *Iowa-Nebraska Light & Power Co. v. City of Villisca, supra*. Article III, Section 1 of the Nebraska Constitution vests the legislative authority of the state in the Legislature, and it is clear that Legislature has plenary authority limited only by the state and federal constitutions. *Orleans Education Association v. the School District of Orleans in Harlan County*, 193 Neb. 675, 229 N.W.2d 172 (1975). Given the Nebraska Constitution and Nebraska law concerning the authority of the Legislature, we believe that the Nebraska Supreme Court would adopt the general rule stated above with respect to the authority of one legislature to bind succeeding legislatures.

We would also note that the Nebraska Supreme Court did indirectly consider the general rule discussed above in *State ex rel. Douglas v. Nebraska Mortgage Finance Fund*, 204 Neb. 445, 283 N.W.2d 12 (1979). That case involved a challenge to the constitutionality of the statutes creating the Nebraska Mortgage Finance Fund, and one argument advanced by opponents of that legislation was that the statutes at issue impermissibly restricted the discretion of future legislatures to revise, amend or repeal the Act in question. The Nebraska Supreme Court stated that the Act did not restrict future legislatures from changing the law. Obviously, had the general rule discussed above not had some application in Nebraska, there would have been no need to discuss the impact of the legislation upon future legislatures, and the Court could have simply rejected that argument out of hand.

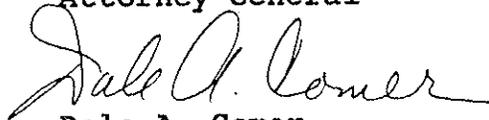
Consequently, based upon the authorities cited above, we believe that LB 507 is unconstitutional as legislation which would

Senator Kate Witek  
May 18, 1993  
Page -4-

improperly attempt to bind or restrict the authority of future legislatures to pass legislation which might impact the inmate population in correctional facilities in Nebraska.

Sincerely yours,

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

Approved by:

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Attorney General

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