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STATE OF NEBRASKA
FEB 28 1990
DEPT. OF JUSTICE

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DATE: February 27, 1990

SUBJECT: Is the principle of uniformity of taxation violated by LB 259 of the Ninety-first Legislature, Second Session and is the principle of "one man, one vote" applicable to "an affiliated school district" as those words are used in that legislative bill?

REQUESTED BY: Senator Rex Haberman
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Harold Mosher, Senior Assistant Attorney General

If LB 259 were enacted into operative law, all real property and all public elementary and high school students would be required to be in school systems which offer education in grades kindergarten through twelve. To accomplish this requirement, Class I school districts, which are not a part of a Class VI school district, would be required to affiliate with one or more Class II, III, IV, V, or VI school district(s). The act provides several methods by which the affiliation of Class I school districts could be accomplished. Under any of those methods, however, the identity of the Class I school districts per se, including their territory, their governing board, and the statutory powers and duties applicable thereto, would remain intact with respect to providing educational services for students in grades kindergarten through eight.

With respect to educational services for students in grades nine through twelve, section 16 of LB 259 provides that whenever the affiliation of a Class I school district becomes final, the provisions of Neb.Rev.Stat. §§79-494 to 79-4,105 for nonresident high school education shall not apply to such district for the ensuing school year and the levy described in section 17 of this act shall become effective for the next ensuing calendar year following affiliation. Section 17 of LB 259 provides that each high school district which affiliates with one or more Class I school districts shall divide its budgeted current operational expense into an elementary portion for grades kindergarten through eight and a high school portion for grades nine through twelve. It is to be noted, however, that the registered voters of a Class

L. Jay Bartel
Elaine A. Catlin
Wynn Clemmer
Delores N. Coe-Barbee
Dale A. Comer
David Edward Cygan
Lynne R. Fritz
Denise E. Frost
Yvonne E. Gates
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson
Donald E. Hyde
Donald A. Kohtz
Sharon M. Lindgren
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John R. Thompson
Susan M. Ugai
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

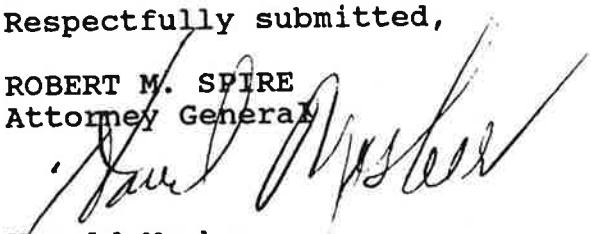
I school district are not permitted to vote for the members of the governing board of such high school districts and consequently have little, if any, legal input in the development and adoption of the high school portion of such budget.

At the outset, there are simply insufficient facts available for this office to determine if the rate of taxation would be uniform pursuant to LB 259 and therefore we express no opinion thereon. We do note that LB 259 surely goes to the very verge of the law. The fact that the registered voters of a Class I school district are not permitted to vote for the members of the governing board of the high school district to which it is affiliated with is troublesome. But it is not necessarily unconstitutional. The statutes at issue in Ewing v. Scotts Bluff County Bd. of Equalization, 227 Neb. 798, 420 N.W.2d 685 (1988) are strikingly similar to LB 259 which the court found to be constitutional. Whether the principle of "one man, one vote" would be applicable to the governing board of the high school district providing the high school program for an affiliated Class I school district is therefore unknown.

In construing an act of the Legislature, all reasonable doubt must be resolved in favor of constitutionality. Mann v. Wayne County Bd. of Equalization, 186 Neb. 752, 756, 186 N.W.2d 729 (1971). For each of the reasons discussed above, we can not say that LB 259 would violate the rule of uniformity or the principle of "one man, one vote."

Respectfully submitted,

ROBERT M. SPIRE
Attorney General



Harold Mosher
Senior Assistant Attorney General

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

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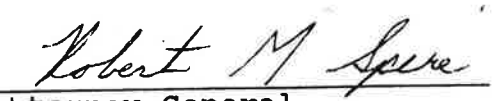

Attorney General