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STATE OF NEBRASKA
OFFICIAL
MAR 8 1990
DEPT OF JUSTICE

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

Date: March 8, 1990

Subject: LB 908; Constitutionality of a bill giving first class cities certain powers with respect to programs for the elderly in light of vagueness and public purpose concerns.

Requested By: Senator D. Paul Hartnett and the Urban Affairs Committee of the Nebraska State Legislature

Written By: Robert M. Spire, Attorney General
Dale A. Comer, Assistant Attorney General

LB 908 is a bill designed to give first class cities in Nebraska certain powers with respect to programs for the elderly. The bill, in its entirety, states:

> A city of the first class may plan, initiate, operate, maintain, administer funding for, and evaluate facilities, programs, and services that meet the needs of elderly persons and contract with state agencies, political subdivisions, and private nonprofit agencies to exercise and carry out such powers.

You have requested our opinion as to whether LB 908 is unconstitutionally vague, and as to whether the bill may involve a constitutionally impermissible use of public monies for a private purpose. We believe LB 908 is constitutional for the reasons discussed below.

Your initial concern with LB 908 involves the broad and general nature of some of the language contained in the bill. For example, you are concerned that the terms "elderly," "funding," "initiate," and "private nonprofit agency" are so vague as to create a constitutional problem. You ask both if the bill provides sufficient specificity for constitutional application, and if it is appropriate or necessary to provide some definition for certain terms contained within the bill.

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It is a general rule that a statute must be reasonably clear and definite to be constitutionally valid. Neeman v. Nebraska Natural Resources Commission, 191 Neb. 672, 217 N.W.2d 166 (1974). The void for vagueness doctrine is based on the due process requirements contained in the Fifth and Fourteenth Amendments to the federal constitution, and contained in Article I Section 3 of our Nebraska Constitution. U.S. v. Articles of Drug, 825 F.2d 1238 (8th Cir. 1987); State v. A.H., 198 Neb. 444, 253 N.W.2d 283 (1977). In order to pass constitutional muster, a statute must be sufficiently specific so that persons of ordinary intelligence must not have to guess at its meaning, and the statute must contain ascertainable standards by which it may be applied. State v. A.H., supra.

Most cases involving the question of unconstitutional vagueness have dealt with statutes or ordinances imposing criminal sanctions. However, the void for vagueness doctrine does apply equally to civil statutes. Id. Even though this is the case, greater vagueness is generally tolerated in a civil statute than in a criminal statute. U.S. v. Articles of Drug, supra. A statute which is otherwise valid will not be held void unless it is so deficient in its terms as to render it impossible to enforce. Neeman v. Nebraska Natural Resources Commission, supra. The constitutional requirement of reasonable certainty in statutory language is satisfied by the use of ordinary terms which find adequate interpretation in common usage and understanding. Fulmer v. Jensen, 221 Neb. 582, 379 N.W.2d 736 (1986). Statutes are sufficiently definite when they use language which is commonly grasped. State v. Metteer, 203 Neb. 515, 279 N.W.2d 374 (1979).

LB 908 contains a general grant of authority to first class cities with respect to programs for the elderly. It contains no criminal penalties, nor does it regulate the ordinary conduct of citizens in any way. It does appear to contain language which is ordinary, in common usage and which can be commonly understood. Under the authorities noted above, we cannot say that the bill appears unconstitutionally vague. Indeed, it does not differ greatly from many of the other general provisions outlining the powers and authority of first class cities. See, Neb.Rev.Stat. §16-201 et seq. (Reissue 1987).

We would agree with your observation that LB 908 contains some very broad language. In addition, it is obviously helpful to all concerned if a particular statute is as clear and as specific as possible. Nevertheless, absent unconstitutional vagueness, the degree of specificity incorporated in a given statute is a matter of policy for the Legislature, and that body must decide if it is appropriate or necessary to add definitional provisions to LB 908.

If such definitional phrases are not included in the bill, the language of LB 908 will be given its plain and ordinary meaning. In Interest of G.B., 227 Neb. 512, 418 N.W.2d 258 (1988).

You are also concerned that LB 908 might require an expenditure of public funds for a private purpose in violation of Article XIII Section 3 of our state Constitution. We believe that the bill is constitutional on its face when considered in light of that constitutional provision.

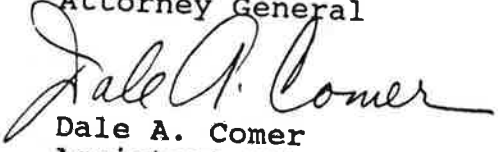
Article XIII Section 3 of our Nebraska Constitution provides, in pertinent part, "[t]he credit of the state shall never be given or loaned in aid of any individual, association, or corporation, . . ." The purpose of this provision is to prevent the state from extending its credit to private enterprise. Lenstrom v. Thone, 209 Neb. 783, 311 N.W.2d 884 (1981); United Community Services v. The Omaha National Bank, 162 Neb. 786, 77 N.W.2d 576 (1956). In essence, public monies may not be used for private purposes. State ex rel. Beck v. The City of York, 164 Neb. 223, 82 N.W.2d 269 (1957). It is for the Legislature to determine in the first instance what is and what is not a public purpose. State ex rel. Douglas v. Thone, 204 Neb. 836, 286 N.W.2d 249 (1979); Chase v. County of Douglas, 195 Neb. 838, 241 N.W.2d 334 (1976). That determination is not conclusive on the courts, but a lack of public purpose justifying a declaration that a particular statute is invalid must be so clear and palpable as to be immediately perceptible to a reasonable mind. Id. The vital point in all such determinations is whether the purpose is public and not whether the agency dispensing the funds is public or private. Chase v. County of Douglas, supra.

As noted in your request letter, LB 908 would allow first class cities "the authority to provide for the needs of a large and growing segment of their populations," the elderly. Under the standards discussed above, we do not believe that this is an inadequate public purpose. Moreover, the general provisions of the bill do not appear, on their face, to require the expenditure of public funds in aid of private entities. Consequently, we do not

perceive any violation of Article XIII Section 3 which is clear or readily perceptible, and we believe that LB 908 is constitutional under that provision of our state Constitution.

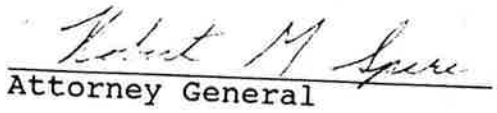
Respectfully yours,

ROBERT M. SPIRE
Attorney General



Dale A. Comer
Assistant Attorney General

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



Attorney General

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