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STATE OF NEBRASKA
OFFICIAL
MAR 22 1990
DEPT. OF JUSTICE

DATE: March 22, 1990

SUBJECT: Whether LB 571 is Unconstitutional by Virtue of Containing Two Subjects

REQUESTED BY: Senator Ernest Chambers
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Linda L. Willard, Assistant Attorney General

You have inquired whether LB 571 violates Article III, Section 14, of the Constitution of the State of Nebraska by virtue of containing two subjects. It is our conclusion that LB 571, as amended, is constitutionally suspect.

As originally introduced, LB 571 addressed the subject of making anabolic steroids a controlled substance and related provisions, including that violation of the section is a Class IV felony. An amendment was attached to the bill requiring financial institutions to maintain and file records of transactions in excess of ten thousand dollars since these "reports and records have a high degree of usefulness in criminal investigations or proceedings" (AM2905, Legislative Journal p. 1271, March 8, 1990). Violations of the reporting requirement could result in a civil penalty.

LB 571 as originally introduced addressed the general subject of crimes and punishments and the title provided:

> FOR AN ACT relating to crimes and punishments; to amend section 28-404, Reissue Revised Statutes of Nebraska, 1943, and section 28-101, Revised Statutes Supplement, 1988; to prohibit the possession or transfer of certain substances without a prescription; to define

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> terms; to provide a penalty; to provide exceptions; and to repeal the original sections.

The title of the amended bill contains additional language related to the currency transactions.

Article III, Section 14, of the Constitution of Nebraska provides in part: "No bill shall contain more than one subject, and the same shall be clearly expressed in the title." However, it is well established that the constitutional provision at issue must be liberally construed. The Nebraska Supreme Court has held that:

> Where a bill has but one general object, no matter how comprehensive that object may be, and contains no matters not germane thereto, and the title clearly expresses the subject of the bill, it does not violate Article III, section 14, of the Constitution.
>
> . . . .
>
> [T]his constitutional provision should be . . . construed as to admit of the insertion in a legislative act of all provisions which, though not specifically expressed in the title, are comprehended within the objects and purposes of the act as expressed in its title; and to admit all provisions which are germane, and not foreign, to the purposes of the act as expressed in its title.

Peterson v. Hancock, 155 Neb. 801, 807-808, 54 N.W.2d 85, 90 (1952).

It is necessary to look at the bill and determine if the amendatory sections are part of the subject matter of the bill. According to Van Horn v. State, 46 Neb. 62, 74, 64 N.W. 365 (1895), legislation is "single" in subject matter "so long as the act has but a single main purpose and object." In determining what the main object is, we must look to the bill itself to ascertain whether or not it contains more than one subject. Id. at 72; and Midwest Popcorn Company v. Johnson, 152 Neb. 867, 871-872, 43 N.W.2d 174 (1950).

The main purpose of the bill relates to crimes and punishments. While the amendment to the bill is an attempt to aid law enforcement authorities, it addresses neither crimes nor punishments. The amendment neither makes it a crime to deal in large sums of money nor does it make it a crime to fail to keep the records or submit the reports required.

Because the courts have given such a liberal interpretation to this constitutional provision in the past, we cannot say for certain whether the courts would declare the amendment in question violative of the State Constitution. However, it is the belief of this office that LB 571 as amended violates Article III, Section 14, of the Constitution of the State of Nebraska.

Sincerely,

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28-01-14.2

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

APPROVED:

Attorney General