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STATE OF NEBRASKA
OFFICIAL
MAR 4 1991
DEPT. OF JUSTICE

DATE: March 1, 1991

SUBJECT: LB 68; Constitutionality of a Bill That Would Require Payment of a Stipend to University Football Players in Light of Concerns Involving the Contingent Operation of the Bill and Vagueness

REQUESTED BY: Senator Elroy Hefner, Nebraska State Legislature

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

LB 68 is a bill which would require that football players at the University of Nebraska-Lincoln be paid a stipend, the amount of which would be determined by the University. The bill provides that it shall become operative "whenever laws requiring a similar stipend for football players are enacted in four additional states which are members of the Big Eight Conference." You are concerned about the bill's constitutionality for several specific reasons described in your correspondence to us. You also raise some additional questions concerning continued operation of the bill in the event of certain actions by the other states involved. Our responses to your various questions are set out below.

You first ask if LB 68 is constitutional with specific reference to the contingency provisions of the bill which make its operation contingent upon enactment of similar laws in four additional states. We do not believe that this contingency provision is unconstitutional.

There is considerable authority in Nebraska which indicates that, while the Legislature cannot delegate its authority to make a law, it can make a law which becomes operative on the happening of a certain contingency. State ex rel. Douglas v. Sporhase, 208 Neb. 703, 305 N.W.2d 614 (1981); State v. Padley, 195 Neb. 358, 237 N.W.2d 883 (1976); Lennox v. Housing Authority of the City of

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Omaha, 137 Neb. 582, 290 N.W. 451 (1940). In fact, we have had occasion to consider the constitutionality of a bill with contingency provisions quite similar to those set out in LB 68. In Opinion of the Attorney General No. 87066, dated May 4, 1987, we indicated that a provision making the operation of a particular bill effective upon passage of identical acts by certain contiguous states did not constitute an unconstitutional delegation of legislative authority. In a similar fashion, we believe that the contingency provision of LB 68 is constitutional.

You next ask whether the language in section 5 of LB 68 referring to "laws requiring a similar stipend" is unconstitutionally vague, and whether it is likely to result in litigation to ascertain its meaning. You are particularly concerned with the use of "similar" in "similar stipend." While our assessment of the likelihood of litigation regarding the meaning of "similar stipend" would be speculative at best, we do believe that this language in the bill is not unconstitutionally vague.

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.

Many 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 civil statutes than in criminal statutes. U.S. v. Articles of Drug, supra. A statute which is otherwise valid will not be held void for vagueness 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).

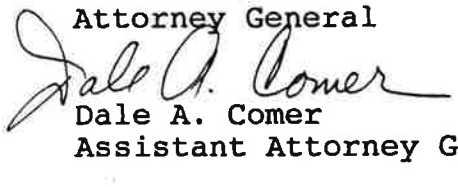
The language at issue in LB 68 involves the use of "similar" in the phrase "similar stipend." It appears to us that "similar" is in ordinary and common usage and can be commonly understood. Moreover, under the standards described above, persons of ordinary intelligence would probably not have to guess at its meaning. Therefore, we do not believe that LB 68 is unconstitutionally vague.

Your final questions concern how LB 68 would be affected if it became operative upon the action of other states in the Big Eight Conference, and then one of the statutes from those other states establishing a similar stipend was abrogated in some way. Specifically, you wish to know what would happen if, under those circumstances, a similar statute in the other states was declared unconstitutional, enjoined, or repealed. We believe that such an action in another state would have no effect on LB 68, and it would remain in force.

LB 68 provides that its provisions will become operative when four additional states which are members of the Big Eight Conference enact laws requiring a similar stipend. While the bill conditions its operation upon the actions of other states, there is no language which indicates that the bill will become inoperative or suspended if something should alter the action of the four additional states involved. In general, statutes not limited in their operation to a particular term of time are, in legal contemplation, perpetual, and continue in force until duly altered or repealed by competent authority. 73 Am.Jur.2d Statutes § 375. Since nothing in LB 68 would limit its operation if one of the four additional states requiring similar stipends changed that requirement, we believe that the bill would continue in force under those circumstances. Once the bill becomes operative, it will remain so until its altered or repealed.

Sincerely,

DON STENBERG
Attorney General



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05-01-14.91
cc: Patrick J. O'Donnell
Clerk of the Legislature
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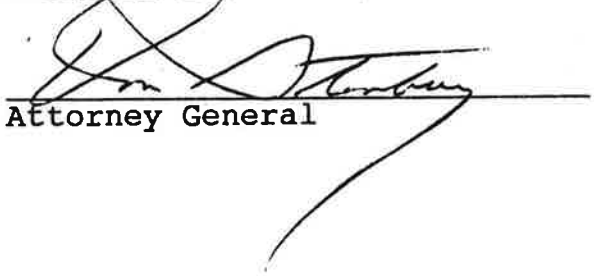

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