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#91043

STATE OF NEBRASKA
OFFICIAL
MAY 21 1991
DEPT. OF JUSTICE

DATED: May 20, 1991

SUBJECT: Constitutionality of Two-Part Amendment to LB 850, the State Claims Bill, Which Amendment Would Bypass the State Claims Board and State Courts and Appropriate $30,000,000 for Payment to Commonwealth Depositors and Amend the State Tort Claims Act to Authorize Such Bypass.

REQUESTED BY: Senator Loran Schmit
District No. 23

WRITTEN BY: Don Stenberg, Attorney General
John R. Thompson, Deputy Attorney General

In your May 2, 1991, letter to this office you requested our opinion with respect to four questions.

You first asked whether the Legislature, when it disagrees with the conclusion of the State Claims Board, must nevertheless approve a claim in the same amount as approved by the Board itself. Tort Claim No. 91-310 which is the subject of your request seeks millions of dollars on behalf of Commonwealth depositors. Under the current State Tort Claims Act any claim in excess of $5,000.00 must be approved by the Lancaster County District Court pursuant to Neb.Rev.Stat. § 81-8,211. After approval or disapproval by the district court any payment in excess of $50,000.00 must be withheld until that award or judgment has been reviewed by the Legislature and specific appropriation made therefor pursuant to Neb.Rev.Stat. § 81-8,224. It does not appear that the State Tort Claims Act contemplates that any amount in excess of that approved by the Board and the court will be appropriated by the Legislature.

L. Jay Bartel, J. Kirk Brown, Laurie Smith Camp, Elaine A. Chapman, Delores N. Coe-Barbee, Dale A. Comer, David Edward Cygan, Mark L. Ells, James A. Elworth, Lynne R. Fritz, Royce N. Harper, William L. Howland, Marilyn B. Hutchinson, Kimberly A. Klein, Donald A. Kohtz, Sharon M. Lindgren, Charles E. Lowe, Lisa D. Martin-Price, Lynn A. Melson, Harold I. Mosher, Fredrick F. Neid, Paul N. Potadle, Marie C. Pawol, Kenneth W. Payne, LeRoy W. Sievers, James H. Spears, Mark D. Starr, John R. Thompson, Susan M. Ugai, Barry Waid, Terri M. Weeks, Alfonza Whitaker, Melanie J. Whittamore-Mantzios, Linda L. Willard

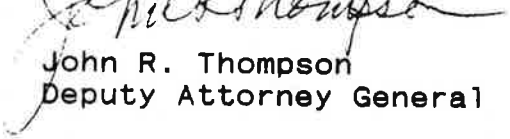
Neb.Rev.Stat. § 81-8,224 appears to contemplate only that the Legislature may withhold payment of any amount in excess of the $50,000.00 until it has reviewed the matter and made appropriation therefor.

You next asked whether the Legislature may approve a claim that the State Claims Board has disapproved. The answer to this would appear to the same as for your first question. In other words, under the State Tort Claims Act the claim must first go to the State Claims Board and, if sufficient in size, must then go to the Lancaster County District Court for review and approval or disapproval. The Legislature's authority in this regard is to either approve or disapprove the amount awarded by the Board and the court. It does not appear that any authority is retained by the Legislature to enlarge upon that amount.

Your third and fourth questions relate to the constitutionality of Amendment 1447 to LB 850. In that regard, we attach a copy of the opinion rendered this date to Senator Coordsen covering the same subject matter. We believe that opinion answers both of your remaining questions.

Very truly yours,

DON STENBERG
Attorney General



John R. Thompson
Deputy Attorney General

Enc.

cc: Patrick O'Donnell
Clerk of Legislature

4-160-7

Approved:

Don Stenberg
Attorney General