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NO.
STATE OF NEBRASKA
OFFICIAL
FEB 24 1995
DEPT. OF JUSTICE

DATE: February 24, 1995

SUBJECT: Constitutionality of Legislative Authority Under Article VIII, § 12 of the Nebraska Constitution to Declare Farm Land and Vacant Land as Blighted and Substandard as Proposed in LB 830

REQUESTED BY: Senator Don Wesely
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Timothy J. Texel, Assistant Attorney General

You have requested the opinion of this office regarding whether LB 830, as currently proposed, would be constitutional based on the language found in Article VIII, § 12 of the Nebraska State Constitution. More specifically, you asked the question whether the Legislature is in a position to be able to declare farm land and vacant land as blighted and substandard.

Under LB 830, if property meets the definition of blighted and substandard set out in the bill, a process is created where the property may be acquired by a city for redevelopment. A central feature in a discussion regarding whether the Legislature can declare farm or vacant land as blighted and substandard is the actual definition given to the term "blighted and substandard." Section 3(6) of LB 830 sets out the Legislature's definition of "blighted and substandard." The definition, as set out in the bill's final reading form states:

> Blighted and substandard area means an area either within a city or cities or up to ten miles outside of the area of operation of a city or cities of the metropolitan

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> or primary class, up to six miles outside of the area of operation of a city or cities of the first class, and up to three miles outside of the area of operation of a city or cities of the second class or village or villages, or any combination thereof, in which by reason of (a) the existence of significant areas of unimproved or insufficiently developed land, (b) the lack of a significant number of new and growing business enterprises, (c) the dilapidation, deterioration, age, or obsolescence of buildings and improvements, (e) the lack of a state, regional, or local redevelopment plan or program, (f) the existence of significant conditions which prevent or do not promote economic growth within such area, (g) the lack of medical and health care facilities, (h) the lack of utilities and other government services infrastructure, or (i) any combination of such factors, there exists (i) insufficient safe, sanitary, and available housing for low-income and moderate-income families and persons, including, but not limited to, persons displaced by clearing of slums or blighted areas or by other public programs, (ii) job growth at less than the United States or midwest average job growth rates, (iii) average wages at less than the United States or midwest average wage levels, (iv) a net emigration of population, (v) population growth that is less than that of the United States or the midwest, (vi) the failure to utilize substantial land areas at their highest and best uses in comparison to other areas within such city or cities, (vii) an abundance of property that is not on the tax rolls at levels at least equal to industrial and residential valuation levels, or (viii) any combination of such results.

LB 830, Section 3(6), 94th Legislature, 1st Session, 1995.

Section 6 of LB 830 declares that it shall be construed in accordance with authority granted by Article VIII, § 12 of the Nebraska Constitution. Article VIII, § 12, in pertinent part, states:

> For the purpose of rehabilitating, acquiring, or redeveloping substandard and blighted property in a redevelopment project as determined by law, any city or village of the state may, notwithstanding any other provision in the Constitution, and without regard to charter limitations and restrictions, incur indebtedness, whether by bond, loans, notes advance of money, or otherwise.

The Nebraska Supreme Court has addressed the constitutionality of the Legislature's ability to define terms in several cases. In ***MAPCO Ammonia Pipeline v. State Bd. of Equal.***, 238 Neb. 565, 471 N.W.2d 734 (1991), several natural gas companies challenged the constitutionality of a bill that excepted certain irrigation equipment from being defined as real property, thus making the equipment fall under the category of personal property. At issue was the definition of the term "fixture."

At the outset of its discussion, the Court stated, "In every constitutional challenge it is presumed that all acts of the Legislature are constitutional, and all reasonable doubts are resolved in favor of constitutionality." ***Id.*** at 571, 471 N.W.2d at 739. This statement appears to be a well established point of law. It has been followed in numerous Nebraska Supreme Court decisions. ***See Distinctive Printing & Packaging Co. v. Cox***, 232 Neb. 846, 442 N.W.2d 566 (1989); ***Landon v. Pettijohn***, 231 Neb. 837, 438 N.W.2d 757 (1989); ***Otto v. Hahn***, 209 Neb. 114, 306 N.W.2d 587 (1981); ***American Fed'n of State, County, and Mun. Employees v. Dept. of Pub. Insts.***, 195 Neb. 253, 237 N.W.2d 841 (1976); and ***Stanton v. Mattson***, 175 Neb. 767, 123 N.W.2d 844 (1963).

Despite the deference given to legislative actions, the bill under consideration in ***MAPCO*** was found to be unconstitutional. The Court pointed out that the constitutional provision involved allowed the Legislature to classify personal property in such a manner as it saw fit. The Court pointed out that in the amended statute, however, the Legislature did not try to classify, but rather arbitrarily declared personal property to be "fixtures."

In ***State ex rel. Meyer v. Peters***, 191 Neb. 330, 215 N.W.2d 520 (1974), the Nebraska Supreme Court faced a situation similar to that in ***MAPCO***. In ***Peters***, the Court addressed the constitutional validity of a legislative bill. The bill changed the property tax laws by altering the definition of what constituted "household goods." Article VIII, § 2 of the Nebraska Constitution states: "Household goods and personal effects, as defined by law, may be exempted from taxation in whole or in part, as may be provided by general law . . . ."[1] The statute which exempted household goods from property taxes was amended by the bill to include "major appliances either attached or detached to real property" in its definition of household goods. The Court held the amended statutory definition to be unconstitutional.

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[1] The constitutional provision in ***Peters*** had previously provided household goods of the value of $200.00 per family were exempt from taxation. The dollar amount was removed and the phrase "as defined by law" was added in an amendment.

The constitutional provision on which the bill in ***Peters*** relied for authority stated the term in question, followed by the phrase "as defined by law," just as is the case with the term "substandard and blighted" in Article VIII, § 12 of the Nebraska Constitution. The ***Peters*** Court questioned whether the constitutional phrase "as defined by law" meant to give definitional authority to the Legislature, or rather that the framers of the amendment intended to adopt the common law definition of "household goods."

Since the constitutional provision itself failed to set a definition, the Court examined what the term "household goods" typically was understood to mean. The Court discussed such factors as whether the voters who adopted the constitutional amendment adding the phrase "as defined by law" envisioned they were authorizing an exemption for real estate. The Court found they had not. The Court determined that "[t]he term 'household goods' would not normally encompass fixtures." ***Id.*** at 333, 215 N.W.2d at 524. The Court also stated:

> In any event, any power to define household goods must be limited for the term 'household goods' to have any meaning whatever. It is obvious that the Legislature could not be allowed to define all property in the state as household goods and personal effects. To permit it to do so would allow it to negate other parts of the Constitution.

Peters at 335, 215 N.W.2d at 525.

The Court also found that "[a]ny definitional powers given to the Legislature are prefixed and limited." ***Id.*** at 334, 215 N.W.2d at 524. Since there is a limit to a legislature's definitional powers, the Court stated it is reasonable to use the common law's concepts regarding a term as a guide. Unfortunately, in the context of your question, it is difficult to assign a typical or common law meaning to the term "blighted." The term is usually defined in the statute with which it is associated and does not lend itself well to a "typical" or common law definition as a more familiar phrase such as "household goods" or "fixtures" does. Research on the subject revealed no Nebraska cases offering a definition of the term blighted that was not based on the statutory definition involved. In LB 830, the Legislature makes evident its intention that it is defining the term "blighted and substandard" pursuant to the grant of power expressed for that purpose in Article VIII, § 12. Section 4(8) of LB 830 declares that if the state board approves a city's application to have an area designated blighted and substandard, "then, for purposes of Article VIII, Section 12, of the Constitution of Nebraska, as applied in the act, the designated blighted and substandard area is considered

as determined by law to be a designated blighted and substandard area and the property within such area is considered to be determined by law to be substandard and blighted property." If reasonable persons could disagree on the issue, the doctrine that reasonable doubts should be resolved in favor of the constitutionality of legislative acts would appear to support the bill's constitutionality.

The Nebraska Supreme Court also addressed the Legislature's power to define a term by statutory declaration in ***Moeller, McPherrin & Judd v. Smith***, 127 Neb. 424, 255 N.W. 551 (1934). In that case, a partnership challenged the constitutionality of an amendment to a tax law which changed the definition of tangible property to include property which has always been considered intangible. The amendment defined such property as stocks, judgments, and demands for labor to be tangible property.

In holding the statutory amendment unconstitutional, the Court examined and gave weight to the term's commonly accepted meaning, just as in the ***Peters*** decision. The Court cited to the definition in Webster's Dictionary, noting that the Legislature's newly created definition directly contravened it.

The Court was particularly concerned that the Legislature had essentially ignored a constitutional definition and redefined the term in a way directly contrary to it. The Court stated, "In our opinion, there is a limit to the legislature's power to nullify and circumvent constitutional provisions by putting an arbitrary, but improper and unfounded, definition upon a certain word." ***Id.*** at 433, 255 N.W. at 555-556.

In a constitutional analysis of legislative acts and bills, the Nebraska Supreme Court has made it clear that the process must begin with the premise that the Legislature's actions are presumed constitutional. That deference is not without limits, however. When defining terms, the Court will look to what that term or phrase is commonly viewed to mean. If there is a generally accepted meaning, and the statutory definition unreasonably conflicts with it, the courts have demonstrated that the statute or bill may be held unconstitutional. If the term's exact definition is somewhat unclear, then reasonable doubts will be resolved in favor of constitutionality. According to the ***Peters*** decision, though, a term's definition cannot be so broad that it fails to exclude anything from the category it was meant to define. It appears that the term "blighted and substandard" does not have a commonly accepted definition at common law. Article VIII, § 12 does not provide a set definition for the term "substandard and blighted," and apparently authorizes the Legislature to define the term through legislation. As the legislative definition provided in LB 830 does not appear to contravene any constitutional or

commonly held definition of what constitutes substandard and blighted property, it would appear likely the Legislature is in a position to define (and declare) farm land and vacant land as blighted and substandard.

Sincerely,

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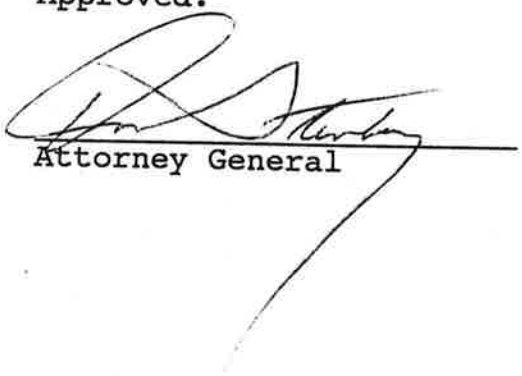
08-02-14.op

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

Approved:



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