STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#92122
NO.

STATE OF NEBRASKA
OFFICIAL
NOV 10 1992
DEPT. OF JUSTICE

DATE: November 10, 1992

SUBJECT: Exemption of Livestock from Property Taxation Under Neb. Const. art. VIII, §§ 1 & 2, as Amended.

REQUESTED BY: Senator Howard A. Lamb
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to the constitutionality of the Legislature's establishment of livestock as a class of personal property exempt from taxation.[1] Specifically, you ask whether the exemption of livestock would be permissible under the provisions of Neb. Const. art. VIII, §§ 1 and 2 as recently amended by the adoption of Amendment 1.

Neb. Const. art. VIII, § 1, as amended, provides, in part, as follows:

---

[1] While your request refers solely to the exemption of "breeding livestock," we assume that your reference specifically to "breeding livestock" results from the fact that certain breeding livestock is presently subject to property taxation based on its "depreciated cost," while other breeding livestock, as well as other livestock, is non-depreciable and not subject to taxation. In effect, therefore, we assume your request is intended to address the validity of the establishment of all livestock as a class of personal property exempt from taxation, as is proposed under LB 3 and LB 8, which have been introduced in the current special session.

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

printed on recycled paper

> Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 4, of this Constitution or any other provision of this Constitution to the contrary: . . . (2) tangible personal property, as defined by the Legislature, not exempted by this Constitution or by legislation, shall all be taxed at depreciated cost using the same depreciation method with reasonable class lives, as determined by the Legislature, or shall all be taxed by valuation uniformly and proportionately; . . . . (Emphasis added).

Neb. Const. art. VIII, § 2, as amended, provides, in pertinent part:

> Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 4, of this Constitution or any other provision of this Constitution to the contrary: . . . (9) the Legislature may define and classify personal property in such manner as it sees fit, whether by type, use, user, or owner, and may exempt any such class or classes of property from taxation if such exemption is reasonable or may exempt all personal property from taxation; . . . . (Emphasis added).

In Attorney General Opinion No. 92005, January 10, 1992, this office addressed, in part, "whether a legislative classification exempting all livestock from property taxation would create an unconstitutional classification if the Legislature were to also enact a tax on depreciable tangible personal property (other than depreciable livestock) based on its "depreciated value." Id. at 1. After analyzing the standards set forth by the Nebraska Supreme Court in judging the reasonableness of legislative classifications under the prohibition against "special legislation" contained in Neb. Const. art. III, § 18, we concluded as follows:

> In our view, legislative enactment of a classification of this nature would violate the special legislation prohibition in Article III, § 18, as it would create an impermissible difference in treatment between similar property of the same class without the existence of any "real and substantial difference" justifying different treatment of some personal property within the class of depreciable personal property (depreciable livestock) and all other depreciable personal property.

Id. at 3-4.

In this opinion, therefore, we expressed the view that legislation providing for different tax treatment by exempting depreciable livestock from the class of depreciable tangible

personal property subject to taxation would violate Article III, § 18, as creating an unreasonable classification. Amendment 1, however, amended Article VIII, § 2, to provide, in part:

> Notwithstanding Article I, section 16, Article III, section 18, or Article VIII, section 1 or 2, of this Constitution or any other provision of this Constitution to the contrary: . . . (9) the Legislature may define and classify personal property in such a manner as it sees fit, whether by type, use, user, or owner, and may exempt any such classes or classes of property from taxation if such exemption is reasonable or may exempt all personal property from taxation; . . . . (Emphasis added).

Article VIII, § 2, as amended, thus provides an exception to the application of the prohibition in Article III, § 18 (or, for that matter, any other constitutional provision) with respect to the Legislature's exemption of personal property from taxation under this provision. This section, as amended, requires only that the exemption be "reasonable," a standard which, assuming our state supreme court would not interpret to be the equivalent of the "real and substantial difference" test employed in judging classifications under Article III, § 18, we believe a classification of exempt property consisting of all livestock would satisfy.

The remaining question would be whether the establishment of an exemption from property taxation for all livestock under state law would constitute a permissible classification under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution, when tangible personal property generally is classified as taxable based on its "depreciated cost." We addressed this question in both Opinion No. 92005 and Attorney General Opinion No. 92015, February 6, 1992. In Opinion No. 92005, we concluded that, "given the limited judicial scrutiny applicable to state tax classifications under the rational basis standard of review under the federal equal protection clause, such a classification would not be wholly indefensible." We further stated:

> Although the question is not free from doubt, we believe that a sound argument can be made that a rational basis exists to support the different classification and taxation of livestock (including depreciable livestock) and other depreciable personal property. The livestock industry is vitally important to the State of Nebraska. It generates income not only to those who own and sell livestock, but to grain farmers, livestock processing operations, and others. Nebraska cattlemen must compete with other states where livestock may not be subject to

> property taxation. Because of its potential for substantial market price fluctuations, the industry is recognized as a particularly risky one.

Id. at 5. We reiterated this view in Opinion No. 92015, in which we stated:

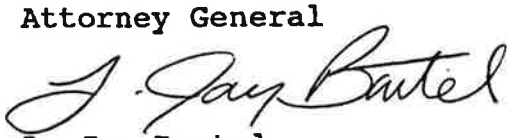
> We do not believe that the establishment of an exemption for all livestock under state law would, necessarily, violate the Fourteenth Amendment guarantee of equal protection, even if other types of tangible personal property remained subject to taxation. . . . The exemption of livestock, including breeding livestock, is not irrational, and . . . plainly furthers legitimate state purposes, given the importance of the entire industry to the state.

Id. at 2.

Based on the foregoing, it is our opinion that, subject to the qualifications noted above, the exemption of all livestock (including breeding livestock, both depreciable and non-depreciable), would likely not be held to violate either the State Constitution or the equal protection clause of the Fourteenth Amendment to the United States Constitution.

Very truly yours,

DON STENBERG
Attorney General

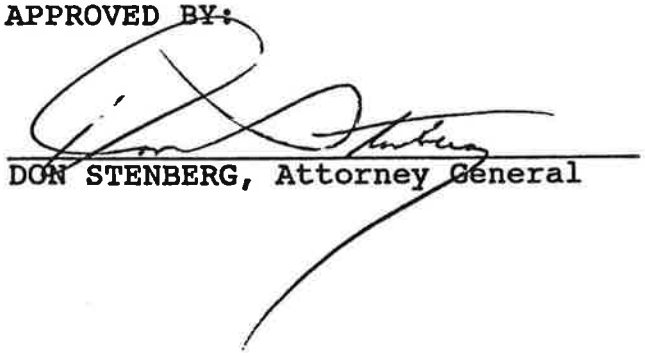


L. Jay Bartel
Assistant Attorney General

cc: Patrick O'Donnell
Clerk of the Legislature

7-513-7.17

APPROVED BY:



DON STENBERG, Attorney General