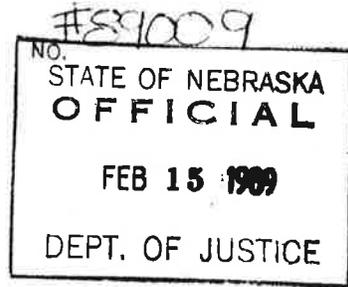


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: February 14, 1989

SUBJECT: The constitutionality of an act of the Legislature which grants a private association (1) the power to waive the commands of a statute and (2) the authority to formulate rules and regulations without designated limitations to carry out an expressed legislative purpose.

REQUESTED BY: Senator Howard Lamb
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Harold Mosher, Assistant Attorney General

In your letter to this office under date of February 7, 1989, you inquire if the grant of authority to the Nebraska School Activities Association in section 10 of LB 183 of the Ninety-first Legislature, First Session (1989), as amended, is a constitutionally prohibited delegation of legislative authority? The same is hereinafter discussed.

The title to LB 183 recites, inter alia, that it is an act "to provide students the option of attending a school in a district other than the one in which he or she resides." The Standing Committee Amendments to LB 183 of February 1, 1989, would, inter alia, strike original section 11 and insert the following:

"Sec. 10. A student in the ninth, tenth, eleventh, or twelfth grade who transfers to an option district shall be ineligible to compete in athletic competition for ninety school days after his or her attendance in the option district begins, except that the Nebraska School Activities Association may waive the ninety-day waiting period upon appeal by the option student in accordance with the constitution and by-laws of the association. No such ineligibility shall occur when the option student returns to his or her resident school district if such student submits a cancellation form."

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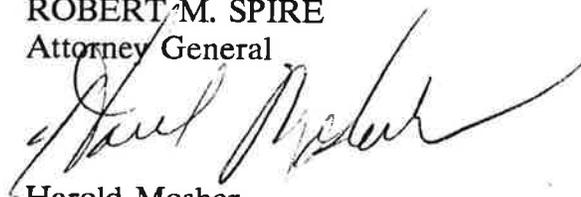
Senator Howard Lamb
February 14, 1989
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We have no quarrel with the Nebraska School Activities Association or the service it provides elementary and secondary schools in the State of Nebraska. It must be remembered, however, that the Nebraska School Activities Association is a private association. It is not a governmental or political subdivision of the State of Nebraska nor an agency thereof. It must also be remembered that the powers of the government of this State are divided into three distinct departments, the legislative, executive and the judicial. Neb. Const., Art. II, sec. 1. Consequently, "[t]he legislature may not delegate to private individuals either legislative or judicial functions." Elliott v. Wille, 112 Neb. 86, 89, 200 N.W. 347 (1924).

If enacted into operative law, section 10 of LB 183, as amended, would grant to the Nebraska School Activities Association certain functions whereby it would be empowered to waive a statutory imposed ninety-day waiting period, in accordance with the constitution and by-laws of that association, so that certain option students may compete in athletic competition. That, in our opinion, is a constitutionally prohibited delegation of judicial and legislative power. Your inquiry is therefore answered in the affirmative.

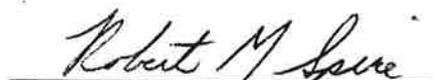
Respectfully submitted,

ROBERT M. SPIRE
Attorney General



Harold Mosher
Assistant Attorney General

Approved:



Robert M. Spire
Attorney General

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

20-507-8