

*Linda*

**DEPARTMENT OF JUSTICE**

STATE OF NEBRASKA

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

NO. *89022*  
STATE OF NEBRASKA  
**OFFICIAL**  
MAR 27 1989  
DEPT. OF JUSTICE

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

DATE: March 24, 1989

SUBJECT: School lands. Constitutionality of legislative amendment to LB 807 which would abolish the in lieu of tax payment to schools in counties wherein school lands are located and substitute a formula diverting the income and interest on school funds and lands into the equalization portion of the School Foundation and Equalization Act.

REQUESTED BY: Senator Ron Withem  
Nebraska State Legislature

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

In your letter of March 22, 1989, you state that you intend to offer an amendment to LB 807 of the Ninety-first Legislature, First Session (1989), which would abolish the in lieu of tax payment to schools in counties wherein school lands are located and substitute a formula diverting 20% of the income and interest earned on school funds and lands into the equalization portion of the School Foundation and Equalization Act and inquire if the amendment is constitutional. You acknowledge that not all school districts qualify for equalization aid pursuant to the Act cited.

Section 7 of the Act to enable the people of Nebraska to form a Constitution and State Government, and for the admission of the State of Nebraska into the Union on an equal footing with the original States, in part, provides:

And be it further enacted, That sections number sixteen and thirty-six in every township . . . shall be, and are hereby granted to said state for the support of the common schools.

(U.S. Stat. at Large, vol. 13, p. 47). The people of Nebraska, of course, formed a Constitution and State Government and thereafter by proclamation of then President Andrew Johnson, the State of Nebraska was admitted to the Union on March 1, 1867.

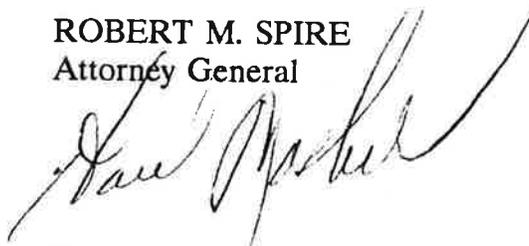
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The law is well settled. A grant by Congress of land to a state for the benefit of the common schools is an absolute grant, vesting title for a specific purpose. Alabama v. Schmidt, 232 U.S. 168, 34 S.Ct. 301, 58 L.Ed.2d 555 (1914). Hence, Section 7 of the Enabling Act and section 9 of Article VII of the Constitution of Nebraska mandate that income from the unsold school lands "be exclusively used for the support and maintenance of the common schools in each school district in the state." As noted in your inquiry, some school districts do not receive funds pursuant to the equalization portion of the School Foundation and Equalization Act and therefore your above described amendment to LB 807 would, in our opinion, be unconstitutional.

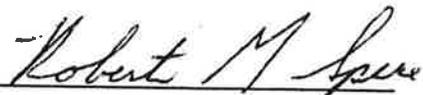
Respectfully submitted,

ROBERT M. SPIRE  
Attorney General



Harold Mosher  
Assistant Attorney General

Approved:

  
Attorney General

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

20-626-8