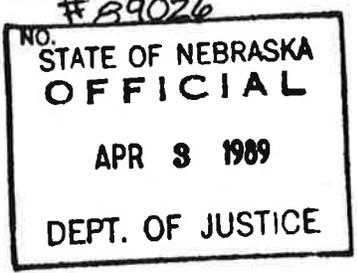


Linda Willard

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: March 31, 1989

SUBJECT: Constitutionality of LB 775, as amended - Tax Rate on Gross Receipts from Bingo Operations Conducted in Nebraska

REQUESTED BY: Senator Sharon Beck
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion on the constitutionality of LB 775, as amended by Revenue Committee Amendment AM 308. Generally, LB 775 proposes to alter the tax rates applied to the gross receipts of licensed bingo operations conducted in Nebraska. The Revenue Committee amendment to LB 775 would retain the current state tax rate under Neb.Rev.Stat. §9-239 (Reissue 1987) on bingo activities conducted in the state at six percent of gross receipts, and would also retain the current local tax rate on bingo activities at four percent of gross receipts. The amendment would, however, alter the local tax rate for bingo operations conducted within any city of the metropolitan class by setting such rate at two percent of gross receipts. Your question concerns whether the difference in tax rates for cities or villages and cities of the metropolitan class proposed under this amendment is constitutionally permissible.

It appears the primary constitutional issue raised by the amendment is whether the differences in local tax rates provided between cities or villages and cities of the metropolitan class represents an unreasonable classification and contravenes the prohibition against special legislation contained in Article III, Section 18, of the Nebraska Constitution. In this regard, the Nebraska Supreme Court has stated: "It is clearly competent for the Legislature to classify for purposes of legislation, if the classification rests on some reason of public policy, some substantial difference of situation or circumstance, that would naturally suggest the justice or expediency of diverse legislation with respect to the objects to be classified." Shear v. County Board of Commissioners, 187 Neb. 849, 853, 195 N.W.2d 151, 154 (1972).

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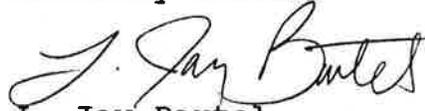
Senator Sharon Beck
March 31, 1989
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The question to be addressed thus concerns whether a rational or reasonable basis can be articulated to support the different tax rates established under the bill for cities or villages and cities of the metropolitan class. In this regard, it should be noted that §9-239 provides that the proceeds from the taxes in question are to be used ". . . for the costs of regulation and enforcement of the Nebraska Bingo Act." Given the differences in community size between the local government entities subject to classification under the bill, it is conceivable that a lower tax rate for larger communities may be rationally based in that the cost of regulation and enforcement of the bingo act may have a more substantial impact on the resources of small communities in comparison to cities of the metropolitan class.

As is the case in all situations addressing the reasonableness of statutory classifications, the determination of reasonableness is one which must, in the first instance, rest with the Legislature. In Bridgeford v. U-Haul Co., 195 Neb. 308, 316, 238 N.W.2d 443, 449 (1976), the Nebraska Supreme Court stated: "[W]hether there was a reasonableness basis for the enactment of the statute in question is primarily a matter of legislative determination, subject to limited judicial scrutiny." Upon consideration of the foregoing, it is our opinion that the different tax rates on gross receipts from bingo operations conducted in cities and villages and cities of the metropolitan class established under LB 775 are not, per se, unreasonable and without any conceivable rational basis. Accordingly, we do not believe that LB 775, as amended, represents unreasonable special class legislation in contravention of Article III, Section 18, of the Nebraska Constitution.

Very truly yours,

ROBERT M. SPIRE
Attorney General

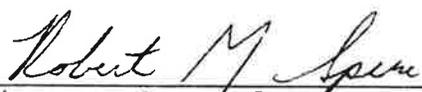


L. Jay Bartel

Assistant Attorney General

7-196-2
cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED BY:



Robert M. Spire
Attorney General