

Linda Willard

# 89031

NO. 89031
STATE OF NEBRASKA <b>OFFICIAL</b>
APR 7 1989
DEPT. OF JUSTICE

**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:** April 6, 1989

**SUBJECT:** State School Funds; Apportionment; in lieu of tax money

**REQUESTED BY:** Senators Loran Schmit and Jerry Chizek  
Nebraska State Legislature

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

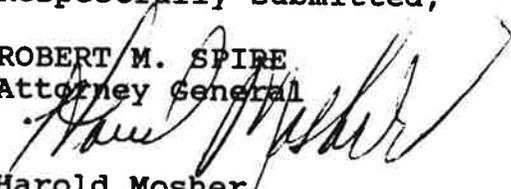
In connection with school lands, as described in section 7 of the Enabling Act, and the distribution of income earned thereon, you state that it appears to you "that the current system of taking so called 'in lieu of tax' money and distributing these funds to certain selected school districts is clearly unconstitutional." You request our opinion thereon.

This office has not and cannot determine the constitutionality of operative statutes. See, for example, Volume 1 of the 1973 Nebraska Legislative Journal at page 37. That is a function of the courts. Indeed, this office is currently defending in court certain operative statutes which pertain to the distribution of income earned on (1) certain school funds and on (2) certain land granted by the Congress to the State of Nebraska for the support of the common schools.

Accordingly, we must, and do, respectfully decline to offer you our opinion on the "current system of taking so called 'in lieu of tax' money and distributing these funds to certain selected school districts." We simply cannot give opinions to senators on the interpretation of legislative bills which have become operative law.

Respectfully submitted,

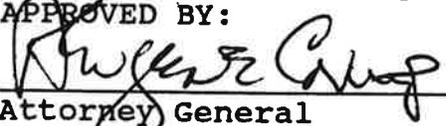
ROBERT M. SPIRE  
Attorney General



Harold Mosher  
Assistant Attorney General

20-62-2  
cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED BY:



Attorney General

- |                       |                       |                      |                     |                       |
|-----------------------|-----------------------|----------------------|---------------------|-----------------------|
| L. Jay Bartel         | Denise E. Frost       | Kimberly A. Klein    | Bernard L. Packett  | Mark D. Starr         |
| Elaine A. Catlin      | Yvonne E. Gates       | Charles E. Lowe      | Marie C. Pawol      | John R. Thompson      |
| Delores N. Coe-Barbee | Royce N. Harper       | Lisa D. Martin-Price | Kenneth W. Payne    | Susan M. Ugai         |
| Dale A. Comer         | William L. Howland    | Steven J. Moeller    | Douglas J. Peterson | Terri M. Weeks        |
| David Edward Cygan    | Marilyn B. Hutchinson | Harold I. Mosher     | LeRoy W. Sievers    | Melanie J. Whittamore |
| Lynne R. Fritz        | Donald E. Hyde        | Fredrick F. Neid     | James H. Spears     | Linda L. Willard      |