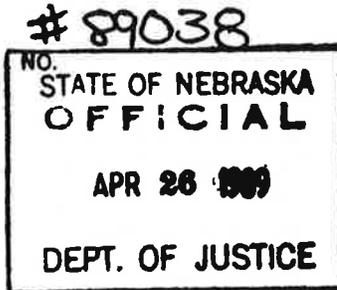


Linda Willard

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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ROBERT M. SPIRE
 Attorney General
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DATE: April 24, 1989

SUBJECT: Constitutionality of LB 809, as amended - Property Tax Relief Trust Fund Act

REQUESTED BY: Senator Dennis M. Byars
 Nebraska State Legislature

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

You have requested our opinion as to the constitutionality of LB 809, as amended by Revenue Committee Amendment AM 1384. Generally, LB 809 would create a Property Tax Relief Trust Fund, which would be based on the amount by which net general fund receipts from state tax revenues exceed projected or forecasted net general fund receipts for the fiscal year. The Fund would be distributed to county treasurers to reimburse local taxing subdivisions for reduced revenues resulting from the percentage of tax relief provided to all property taxpayers by operation of the Act. As originally drafted, the bill provided that all property taxpayers would be eligible to receive the same percentage of any tax relief available. The Committee Amendment, however, would place a \$500.00 limit on the amount of property tax relief available to any taxpayer. Your question is whether the bill, as amended, providing for an equal percentage of relief to all taxpayers but limiting the extent of the relief to any one taxpayer to a maximum dollar amount, is constitutional.

Article VIII, Section 1 of the Nebraska Constitution, provides, in pertinent part: "Taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises, . . ." In State ex rel. Bee Building Co. v. Savage, 65 Neb. 714, 91 N.W. 716 (1902), the Nebraska Supreme Court, discussing the purpose of the constitutional principle mandating uniform and proportionate taxation of property, stated:

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The dominant idea of the organic law is that needful revenues for the purpose of defraying expenses of state and municipal government shall be raised by levying a tax on property by valuation in such manner as that every owner of property subject to taxation shall pay taxes in proportion to the value of the property owned. . . . It is equally obvious that in order to comply with the intent and spirit of the fundamental law, as well as the statutes enacted in pursuance thereof, all property valued and assessed for revenue purposes should be assessed at a uniform value, to the end that every person and corporation shall contribute his or its just and fair proportion of the needful revenues for governmental purposes.

* * *

The paramount object of the constitution, and the laws relative to taxation, as we conceive the rule to be, is to raise all needful revenues by valuation of the taxable property so that each owner of property taxed will contribute his or its just proportion of the public revenues.

Id. at 742-43, 91 N.W. at 719-20. See also Equitable Life v. Lincoln County Board of Equalization, 229 Neb. 60, 62, 425 N.W.2d 320, 322 (1988) (noting the uniformity requirement was adopted "[i]n apparent recognition of the reality that governmental costs not shared by one group of taxpayers must necessarily be shifted to and borne by the remaining taxpayers, . . .").

The rule of uniformity applies to both the rate of taxation and the valuation of property for tax purposes. State ex rel. Douglas v. State Board of Equalization and Assessment, 205 Neb. 130, 286 N.W.2d 729 (1979); Grainger Brothers Co. v. County Board of Equalization, 180 Neb. 571, 144 N.W.2d 161 (1966). All real property and taxable personal property are in the same class for purposes of taxation, and must be valued and assessed uniformly and proportionately in accordance with the mandate of Article VIII, Section 1. Grainger Brothers, 180 Neb. at 582, 144 N.W.2d at 168-69. "Taxing authorities may not withdraw any property from the principle of uniformity of taxation as provided by the Constitution and statutes of the state and one owner of property cannot be compelled to pay a greater proportion of taxes according to the value of his property than another property owner of the same class is required to pay." Chicago, B. & O. R.R. Co. v. State Board of Equalization & Assessment, 170 Neb. 77, 78, 101 N.W.2d 856, 858 (1960) (syllabus of court). In sum, the uniformity clause has been construed by the court to prohibit discrimination between property

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taxpayers "in any manner." State ex rel. Cornell v. Poynter, 59 Neb. 417, 428, 81 N.W. 431, 433 (1899).

In addition to the uniformity clause contained in Article VIII, Section 1, of the Nebraska Constitution, Article VIII, Section 4 contains a prohibition against legislative action releasing or discharging taxpayers from their proportionate share of taxes. Specifically, Article VIII, Section 4 provides, in pertinent part:

. . . the Legislature shall have no power to release or discharge any county, city, township, town, or district whatever, or the inhabitants thereof, or any corporation, or the property therein, from their or its proportionate share of taxes to be levied for state purposes, or due any municipal corporation, nor shall commutation for such taxes be authorized in any form whatever;¹

The rationale behind the prohibition against the release or forgiveness of taxes contained in Article VIII, Section 4, and its interrelationship with the uniformity clause, was discussed by the Nebraska Supreme Court in Peterson v. Hancock, 155 Neb. 801, 54 N.W.2d 85 (1952) as follows:

In Steinacher v. Swanson, 131 Neb. 439, 268 N. W. 317, this court held that: "The legislature does not have the power to release or discharge a tax, such action being prohibited by section 4, art. VIII of the Constitution." Further, "Neither may the legislature circumvent an express provision of the Constitution by doing indirectly what it may not do directly." The opinion, quoting from County of Lancaster v. Trimble, 33 Neb. 121, 49 N. W. 938, said: "'The legislature is without power to release any inhabitant or corporation from his or its proportionate share of taxes, nor can it confer such authority upon county commissioners. * * * The legislature is powerless to confer such authority. It cannot do indirectly what the Constitution prohibits it from doing directly; that is clear. Wood v. Helmer, 10 Neb. 65, 68.'" "

¹ While Article VIII, Section 4, refers to taxes levied for "state purposes" or due any municipal corporation, we have previously interpreted this provision to include taxes levied by counties or other governmental subdivisions of the state to support local government functions, as such entities are solely creatures of the state. Attorney General Opinion No. 32, March 12, 1985.

In *State ex rel. Cornell v. Poynter*, 59 Neb. 417, 81 N. W. 431, this court held: "The rule of uniformity prescribed by section 1, article 9, of the constitution, inhibits the legislature from discriminating between taxpayers in any manner whatever.

"Under section 4, article 9, of the constitution the legislature is powerless to pass a law releasing or discharging any individual or corporation or property from the payment of any portion of the taxes to be levied for state or municipal purposes." In the opinion, it is said: "The rule of uniformity inhibits the legislature from discriminating between taxpayers in any manner. See *State v. Graham*, 17 Nebr., 43. In every instance where this court has spoken upon the subject it has been determined that the legislature is powerless to relieve from the burdens of taxation the property of any individual or corporation, but that the constitutional rule of uniformity requires all taxable property within the taxing district where the assessment is made shall be taxed, except property specifically exempt by the fundamental law. This doctrine is entirely sound, and the language of the constitutional provision we have been considering will not authorize or permit of any other or different interpretation.

"By section 4, article 9, of the constitution the legislature, in plain and unequivocal language, is inhibited from enacting any law releasing or discharging any individual or corporation or property from their or its proportional share of taxes to be levied for state or municipal purposes."

Id. at 821-23, 54 N.W.2d at 96-97.

As noted in a previous opinion issued by our office, ". . . the constitutional prohibition against the forgiveness of taxes is merely another manifestation of the principle of uniformity of taxation set forth in Article VIII, Section 1, of the Constitution. Taxpayers must simply be treated uniformly throughout the entire process of taxation." Attorney General Opinion No. 45, March 27, 1985. In essence, the uniformity requirement of Article VIII, Section 1, and the prohibition against the release or discharge of taxes contained in Article VIII, Section 4, both operate to inhibit the imposition of non-uniform and disproportionate tax burdens on property owners in this state.

Upon consideration of the foregoing, we believe it is evident that LB 809, as currently amended, would violate these constitutional principles for the reason that the establishment of

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a dollar limitation on the amount of property tax relief provided would necessarily result in the imposition of non-uniform and disproportionate tax burdens on the property of certain taxpayers. As you note in your request, while specific amounts of tax liability and tax relief are dependent upon local tax rates and funding made available under the terms of the bill, the Nebraska Department of Revenue has estimated that, based on an average tax rate of 2.6 percent and the availability of funding to provide tax relief at the level of 5 percent of tax liability, the \$500.00 threshold would be reached when a taxpayer's valuation exceeded approximately \$384,000.00, at which level the taxpayer would have a tax liability of \$10,000.00. The Department has indicated that over 38,000 farms, several hundred residences, 7,000 commercial and industrial properties, and 80 centrally assessed properties would have valuations in excess of this \$384,000.00 valuation figure. Any property owner falling in this category would receive less than the five percent relief provided to all other property owners by operation of the \$500.00 maximum relief provision contained in LB 809. The exact percentage of relief for any such taxpayer would depend upon the amount by which their tax liability exceeded the \$10,000.00 figure at which the \$500.00 maximum relief threshold would be reached.

Another way of demonstrating the disparate impact of the \$500.00 limitation on tax relief available to any taxpayer under the bill is to examine the effective tax rate placed on property owners under such a provision. Assuming a tax rate of 2.6 percent and funding to provide 10 percent relief, the Department has calculated that a homeowner with a residence valued at \$50,000.00 would be taxed at an effective rate of 2.3 percent; a farmer with land valued at \$250,000.00 would be taxed at an effective rate of 2.4 percent; and a utility valued at \$10 million would be taxed at an effective rate of 2.6 percent. It is, therefore, apparent that the imposition of a maximum dollar limitation on the amount of property tax relief provided under LB 809 would effectively result in the imposition of non-uniform and disproportionate taxation in relation to the value of various properties after the point at which a taxpayer's liability exceeds the amount necessary to reach the \$500.00 maximum amount of relief.

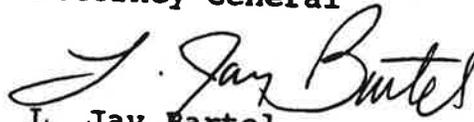
It is true that LB 809 does not directly provide for the imposition of different tax rates on various property owners, nor does it directly alter the taxable value of any property subject to taxation. As we have pointed out, however, the effect of the provision of a \$500.00 maximum amount of relief for any property taxpayer is to create non-uniform and disproportionate tax burdens among taxpayers to the extent that certain large taxpayers will effectively be compelled to pay at a higher rate in proportion to the value of their property in comparison to taxpayers whose tax liability does not exceed the maximum necessary to reach the

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\$500.00 limit established under the bill. As stated by the court in Banner County v. State Board of Equalization and Assessment, 226 Neb. 236, 252, 411 N.W.2d 35, 45 (1987): "The Legislature cannot circumvent an express provision of the Constitution by doing indirectly what it may not do directly." Thus, to the extent that the \$500.00 maximum relief provision contained in LB 809, as amended, would result in the imposition of non-uniform and disproportionate tax burdens in relation to the value of the property of certain taxpayers, it is our opinion that the establishment of such a limitation on the amount of relief provided would violate both the letter and spirit of the principle of uniformity of taxation mandated under Article VIII, Section 1, and would contravene the prohibition against releasing taxpayers from their proportionate share of taxes, in violation of Article VIII, Section 4.

Very truly yours,

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

APPROVED BY:


Attorney General