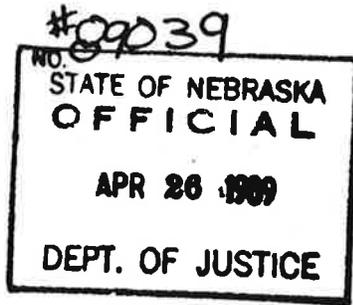


Linda Willard

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: April 24, 1989

SUBJECT: School Districts. Affiliated units.

REQUESTED BY: Senator Ron Withem
Nebraska State Legislature

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

In your letter of April 11, 1989, you ask our opinion on the constitutionality of proposed Committee amendments to LB 259. Specifically, sections 23 and 24 of AM #800 and your explanation thereof and court cases which arguably support your explanation.

We have examined your questions and the court cases cited in support of your explanations and are in accord therewith but with two caveats. First, LB 259, as amended, is a new and different approach to tax equity. As a result, it raises difficult questions, such as the questions you have submitted, to which there is limited or no legal precedent. Second, without specific data, it is impossible for us to offer an opinion in connection with the melding of tax requests which are discussed in your question 3. We quite agree with you that recent cases of the Nebraska Supreme Court have not required an exacting matching of tax burden and benefits in the context of nonresident high school tuition formulas. The ultimate question, of course, is how much variation will the court permit and in particular cases, how much will actually exist? There simply is no ready answer to either of these questions. Therefore, with the understanding that there is limited legal precedent coupled with the lack of specific facts, we approve and concur with the answers you have suggested in response to the questions asked, each of which are hereinafter quoted verbatim:

1. Do you foresee any constitutional problems relating to voting rights and special privilege/class legislation under Article I, section 16 and Article III, section 18 of the Nebraska Constitution.

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

Class I patrons are not given voting representations on the high school board. They will, however, have the right to vote on new bond issues and, through their own boards appoint an advisory committee to represent Class I interests in the high school program. The rationale for the different treatment of the Class I districts as far as representation is concerned is that the Class I's remain a separate and legally independent political subdivision, with the rights of self-government of their elementary schools. The merger or Class VI options are open if full voting privileges are desired. In addition, the Supreme Court, in the recent case of Ewing v. Scottsbluff County Board of Equalization, 227 Neb. 798, 420 N.W.2d (1988), has held that Class I districts have representation with the State Board of Education and the Legislature in the context of the nonresident high school tuition system. There is no representation for Class I's in the receiving district boards in that system.

2. Similarly, do you foresee any U. S. Constitutional difficulties under the Fourteenth Amendments Equal Protection Clause--one person/one vote doctrines as far as the voting privileges of Class I voters.

Cases such as Kramer v. Union Free School District, 395 v.s. 621 (1969) pertain to unequal voting privileges for residents of the same school district. Since voters of Class I's part of an affiliated unit are not legal residents of the high school district, it would not seem that the Kramer doctrine would apply.

3. Do you foresee any constitutional difficulties under the uniformity of taxation clause (Neb. Const., Article VII, Section 1) and the commutation of taxes clause (Neb. Const., Article VIII, section 4).

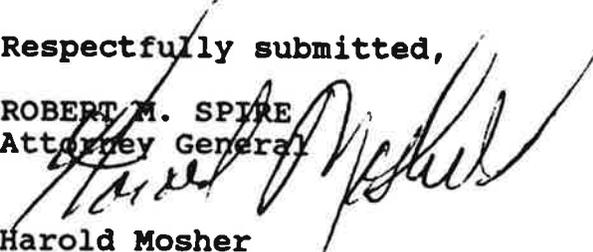
Arguably, with the melding of the tax requests of the different school districts, non affiliated unit into a common levy, there will be some shifts of tax burdens between taxpayers in such different school districts. However, recent cases of the Nebraska Supreme Court such as Ewing v. Scottsbluff County Board of Equalization, 227 Neb. 798, 420 N.W.2d 685 (1988) and Mann v. Wayne County Board of Equalization, 186 Neb. 134, 186 N.W.2d 729 have not required an exact matching of tax burden and benefit in the context of nonresident high school tuition formulas which establish tax levies applied to Class I property for support of high school education. In addition, section 24 of the bill (am #800) opens up the programs of services of all schools in an affiliated unit

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to all students residing in the unit. Thus the benefits of the common levy are available to all children in the unit.

Respectfully submitted,

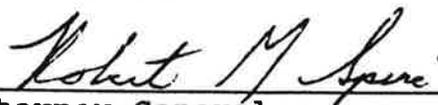
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20-63-2

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

APPROVED BY:



Attorney General