

Linda Willard

DEPARTMENT OF JUSTICE  
STATE OF NEBRASKA  
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NO.  
STATE OF NEBRASKA  
OFFICIAL  
APR 26 1989  
DEPT. OF JUSTICE

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

DATE: April 25, 1989  
SUBJECT: May LB 683 be altered to allow Sanitary Improvement Districts to receive funds under the Municipal Infrastructure Redevelopment Fund Act?  
REQUESTED BY: Senator Emil E. Beyer, Jr.  
Nebraska State Legislature  
WRITTEN BY: Robert M. Spire, Attorney General  
Dale A. Comer, Assistant Attorney General

LB 683, the Municipal Infrastructure Redevelopment Fund Act (MIRF), would create a special fund which would make monies available to Nebraska municipalities for the construction of various municipal improvements including water systems, waste treatment and management facilities, airports, municipal buildings and mass transit and other transportation systems. You are concerned that, by diverting general fund monies to MIRF, Sanitary Improvement Districts (SID's) will be left without funding to improve their facilities. You have therefore posed several questions regarding the propriety of including SID's in the funding provisions of LB 683. Our conclusions are set forth below.

You first ask, ". . . would it be feasible or constitutional to include SIDs under the funding provisions of LB 683?" Obviously, the feasibility of such a course of action is a policy question which must be decided by the Legislature. On the other hand, we see no constitutional problems with including SID's as recipients of monies under the MIRF provisions. Indeed, we have previously indicated that SID's are quasi-municipal corporations which may receive tax money from state funds. See, Opinion of the Attorney General No. 67, April 7, 1981. In the absence of any indication from you as to specific constitutional concerns, we believe it would be constitutionally permissible to include SID's under the funding provisions of LB 683.

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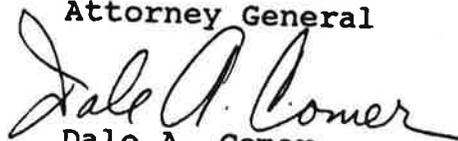
Senator Emil E. Beyer, Jr.  
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Your second question apparently involves the existing Nebraska statutes which provide gas tax revenues to the Highway Allocation Fund and Nebraska municipalities. You question whether those statutes "unfairly discriminate against citizens living in Sanitary Improvement Districts" since those statutes do not provide that SID's will receive portions of the gas tax revenues.

We have indicated on numerous occasions that this office may not offer opinions on the constitutionality of existing statutes. See, Opinion of the Attorney General No. 85157, December 20, 1985. Therefore, we are unable to respond to your question in detail. However, we would note that a statute may discriminate in favor of a certain class if the discrimination is founded upon a reasonable distinction or difference in state policy, or if any state of facts can reasonably be conceived which would sustain the classification. Farm Bureau Life Insurance Company v. Luebke, 218 Neb. 694, 358 N.W.2d 754 (1984). We cannot say that it is impossible to reasonably conceive a state of facts which would sustain a classification between SID's and other municipalities similar to that created by the current gas tax revenue distribution statutes.

Sincerely yours,

ROBERT M. SPIRE  
Attorney General



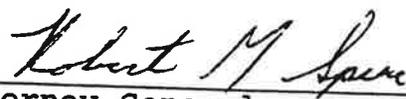
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cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED BY:



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