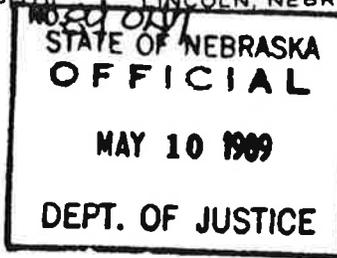


Linda Willard

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: May 9, 1989

SUBJECT: Constitutionality of the Homestead Exemption Provisions of LB 84, as Amended

REQUESTED BY: Senator Rex Haberman
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 Section 8 of LB 84, the Property Tax Relief Act, as amended by AM 1711. Generally, pursuant to this amendment, owners of homestead property are eligible to receive property tax relief in the form of a reduction in the valuation of their homestead for tax year 1989, in an amount which is the greater of: (1) an exemption of the first \$5400 of the actual value of the homestead; (2) an exemption under Neb.Rev.Stat. §§77-3507 to 77-3509 (Reissue 1987 and Cum. Supp. 1988) for which the owner is qualified; or (3) the 8.5 percent reduction in value provided to real and taxable personal property under the Act. Your specific question concerns whether the treatment of homestead property in this manner somehow violates either Article VIII, Sections 1 and 4, of the Nebraska Constitution, or Article III, Section 18, of the Constitution. In spite of the very limited time period which is available for us to consider your questions, we will nevertheless endeavor to provide a general response to the apparent concerns raised in your requests.

Recently, in Attorney General Opinion No. 89042, issued on April 27, 1989, we addressed certain questions with regard to the homestead exemption provision contained in LB 84 prior to its recent amendment. In this opinion, we noted that Article VIII, Section 2, of the Nebraska Constitution, expressly authorizes the provision of a homestead exemption. This section provides, in pertinent part: "The Legislature may by general law provide that a portion of the value of any residence actually occupied as a homestead by any classification of owners as determined by the Legislature shall be exempt from taxation." Prior to 1983, the

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Legislature provided a general homestead exemption based on the exemption of a percentage of the value of homestead property in the state. Neb.Rev.Stat. §77-3506 (Cum. Supp. 1980) (repealed, Laws 1983, LB 396).

The potential constitutional defect which we discussed in connection with our opinion concerning LB 84 prior to its current amendment concerned the impact of the provision of a \$6800 homestead exemption to all homeowners and the granting of a ten percent property tax reduction to other real property owners, such as agricultural or commercial taxpayers. In essence, under the bill as previously drafted, certain homeowners would have been subjected to disproportionate taxation in comparison to owners of non-homestead property by virtue of the fact that they would have received a lesser percentage of relief than owners of agricultural, commercial, or other non-homestead real property. It was in this context that we noted our concern that this disparate treatment would violate Article VIII, Section 1, and could also constitute unreasonable class legislation, in violation of Article III, Section 18, of the Nebraska Constitution.

In our view, the current amendments to LB 84 (in particular, the provisions contained in Section 8), appear to eliminate the constitutional concerns expressed in our prior opinion. While it is true that homeowners with low actual valuations of property for tax purposes may receive greater relief in proportion to the values of their property than owners of higher-valued homestead properties, this has always been true in the case of legislative enactments providing for the exemption of a portion of the value of homestead property, and is consistent with the express authority granted the Legislature under Article VIII, Section 2. As to the validity of maintaining the special homestead provisions contained in Neb.Rev.Stat. §§77-3507 to 77-3509 (Reissue 1987 and Cum. Supp. 1988), we do not believe this presents any constitutional problem, as Article VIII, Section 2, allows the Legislature to provide a homestead exemption by "any classification of owners as determined by the Legislature. . ." It has never been suggested that the separate classifications of owners provided for under §§77-3507 to 77-3509 (including certain persons over age 65, certain veterans or the unremarried widows or widowers of some veterans, and certain disabled individuals) are unreasonable or arbitrary and, accordingly, we do not believe the maintenance of these exemption provisions would be found to be unconstitutional.

Finally, while it is not entirely clear from your request, it appears you are concerned that the provision of relief for certain owners of homestead property based on an 8.5 percent reduction in the valuation of such property, while providing an exemption of the first \$5400 of homestead property for eligible property owners or

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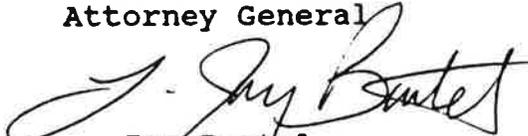
the exemptions contained in §§77-3507 to 77-3509, would violate the above-referenced constitutional provisions.

Again, referencing our previous opinion, it appears that the recently adopted amendments to LB 84 accommodate our prior concern that, by exempting only a specified dollar amount of the value of all homestead property while providing a ten percent reduction to other non-homestead real property owners, owners of homestead property above a certain valuation would, in effect be taxed disproportionately in relation to the relief provided to owners of commercial, agricultural, or non-homestead real property, in violation of the Constitution. The bill, as amended, would seemingly operate to preclude a situation where a taxpayer receiving relief on homestead property would, under any circumstance, receive less relief than any non-homestead property owner in proportion to the value of their property. This would appear to remove the potential constitutional objection raised in our earlier opinion in this regard.

In conclusion, it is our opinion that, based on the limitations previously stated, the provisions of LB 84, as currently amended, do not appear to be unconstitutional in relation to any of the questions which, based on our understanding of your requests, you have raised for our consideration.

Very truly yours,

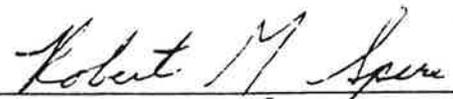
ROBERT M. SPIRE
Attorney General



L. Jay Bartel
Assistant Attorney General

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

APPROVED:


Attorney General

7-127-13