

DEPARTMENT OF JUSTICE

ROBERT M. SPIRE
Attorney General

STATE OF NEBRASKA

ASSISTANT ATTORNEYS
GENERAL

A. EUGENE CRUMP
Deputy Attorney General

WARREN D. LICHTY, JR.
Assistant Attorney General
Chief Counsel
Department of Roads

State Highway Building
P.O. Box 94759
Lincoln, Nebraska 68509-4759
Telephone (402) 479-4611

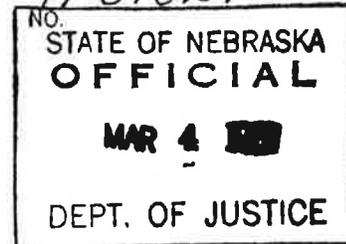
GARY R. WELCH
JOHN P. REGAN
ROBERT G. AVEY
JOHN E. BROWN
WILLIAM J. ORESTER
JEFFERY T. SCHROEDER

DATE: February 25, 1987

SUBJECT: Rural mailboxes

REQUESTED BY: Senator Howard Lamb
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Warren D. Lichty, Jr., Assistant Attorney General



Your inquiry regarding LB 299 which is pending, together with amendment AM0152 which is also under consideration, is whether the legislature has the power to make the requirements contained in amendment 0152. The first question asks whether section 1(2) of the amendment is within the authority of the legislature. It, in effect, requires that no mailbox may be removed by departmental rule and regulation except in connection with a federal-aid highway construction or reconstruction project.

Whether this is within the authority of the legislature depends on whether the requirement is constitutional. If unreasonable classifications are established, then it would be deemed special legislation. We believe this section does create unreasonable classifications and is therefore unconstitutional.

Starting with a general class consisting of all rural mailboxes, we find that general class split into two classifications. According to the amendment, it applies to any State highway on which construction or reconstruction financed by federal funds occurs after January 1, 1987. It does not apply to any State highways on which construction or reconstruction occurs after that date if financed solely by State funds. Therefore, we do have two classifications.

The next question then is whether there is a rational or reasonable basis for distinguishing between Landowner A who lives on a State highway on which a federal aid project is constructed and Landowner B who lives on a State highway on which a State-funded project is constructed. In other words, is there any State purpose in allowing Landowner B to keep his decorator mailbox while Landowner A loses his. We are unable to see any difference between Mr. A and Mr. B which would justify putting them into separate classifications.

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A review of the cases indicates that legislative acts of a similar nature have been held unconstitutional as improper classifications. The motor vehicle inspection law was held unconstitutional as requiring some roadable vehicles to be inspected while others were exempted. State v. Edmunds, 211 Neb. 380, 318 N.W.2d 859 (1982). A former Installments Sales Act which set different interest rates for automobiles, based on their age was held unconstitutional, and the court said:

The age of a motor vehicle affords no reasonable classification for the fixing of maximum rates of interest....

We conclude that the classification of property...for the purpose of fixing maximum rates of interest...is unreasonable, arbitrary and capricious, and in violation of Article III, section 18, Constitution of Nebraska, prohibiting special legislation. The class does not operate uniformly on the persons and property in the class sought to be regulated. Elder v. Doerr, 175 Neb. 483, 494-495, 122 N.W.2d 528 (1963).

In Axberg v. City of Lincoln, 141 Neb. 55, 64, 2 N.W.2d 613 (1942), a statute requiring all cities of the metropolitan and first class which maintained paid firemen to provide pensions was amended to exclude home rule cities from this requirement. The court said:

We think that [the] section...is not only void as local and special legislation in its application, but it is violative of section 18, art. III of the Constitution, in that it is not uniform as to class. There is no sufficient reason advanced why one city of the first class should be exempted from the special obligations and burdens of the firemen's pension law, while others in the same class are required to submit to such obligations and burdens. The attempt of the legislature, by the enactment of [the] section...constitutes arbitrary action, and the contentions of appellees to the contrary are without merit.

Your second question is whether section 2 of the amendment may exempt from liability under the Tort Claims Act, the State or any political subdivision in regard to mailboxes. First, we must point out that section 2 does not accomplish this stated purpose. Section 2 amends a portion of the Political Subdivisions Tort

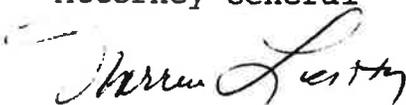
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Claims Act by making this exception. The State is governed by the State Tort Claims Act, which the amendment does not purport to amend. Therefore, amendment AM0152 would clearly not exempt the State from such liability. Since section 1 refers only to the Department of Roads and State highways, it would appear that the drafters did not really intend to amend Section 23-2410. If it was intended to exempt the State from liability for nonconforming mailboxes, it would appear that section 2 should amend Section 81-8219.

As to that part of your second question which asks if the legislature has authority to enact such an exemption, we believe that it has. Prior to enactment of the State Tort Claims Act, the State was exempt from all such suits under the doctrine of sovereign immunity. The effect of the State Tort Claims Act, as stated in Section 81-8209, was to continue sovereign immunity with certain exceptions, and it is under the exceptions that the State may be sued. Pursuant thereto, however, section 81-8219 lists certain types of claims which may not be brought. Thus, subsection 2 of section 2 of the amendment, if placed in Section 81-8219, would only add another exception to those already listed. This, we believe, the legislature has every right to do.

Sincerely,

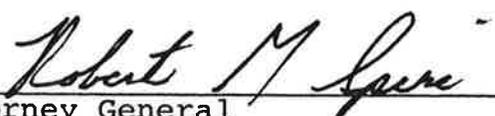
ROBERT M. SPIRE
Attorney General


Warren D. Lichty, Jr.
Assistant Attorney General

WDL/ta

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

APPROVED:


Attorney General