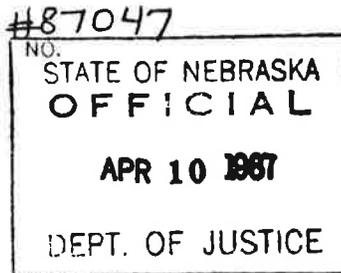


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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ROBERT M. SPIRE  
Attorney General  
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Deputy Attorney General

DATE: April 10, 1987

SUBJECT: Constitutionality of LB 644 and Amendment #0081,  
Dealing With Nonresident Tuition

REQUESTED BY: Senator Dennis Baack  
Nebraska State Legislature

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

LB 644 is an act to amend Neb.Rev.Stat. §79-1338 (Reissue 1981) and Neb.Rev.Stat. §79-4,102 (Supp. 1986). If enacted into operative law, LB 644 would change the calculations relating to nonresident tuition; it would change a provision relating to the School Foundation and Equalization Fund; and would repeal the original sections. Amendment thereto, #0081, describes certain calculations in detail. However, the calculations are not necessarily based upon the cost to a school district to provide high school education to nonresident students per se but are based, in part, upon certain percentage factors which may or may not have a rational basis with the cost of the high school education. Notably absent from the calculations is the cost of retiring bonded indebtedness.

In the absence of specific facts, it is impossible to determine if the calculations to be made pursuant to this legislative bill would result in the levy of a tax that would violate the rule as to uniformity. It would certainly seem possible in view of the weighted percentage factors to be applied to the calculations and the absence from the calculations in the cost of retiring bonded indebtedness. It must be kept in mind that a state cannot tax itself for the benefit of the people of another state. So imposing a tax on one municipality or part of the state, for the purpose of benefiting another municipality or part, violates the rule as to uniformity. "No taxing district can be taxed for the exclusive benefit of another district." See, Peterson v. Hancock, 155 Neb. 801, 817, 54 N.W.2d 85 (1952). Thus, given the right set of facts, a court, in our opinion, could quite properly find that LB 644 and the amendment thereto are unconstitutional.

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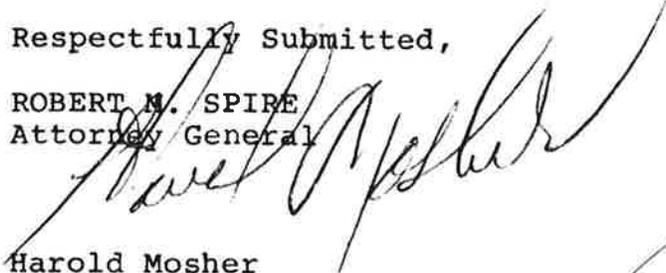
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Senator Dennis Baack  
April 10, 1987  
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Respectfully Submitted,

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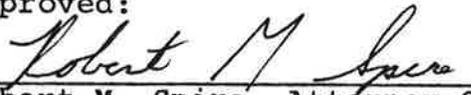


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HM:vs

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

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Robert M. Spire, Attorney General