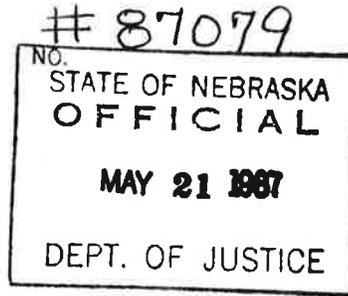


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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DATE: May 20, 1987

SUBJECT: Interpretation of LB 185, As Amended - Sales Tax
Exemption for Materials Used in Farm Machinery
Repair and Maintenance

REQUESTED BY: Senator Don Wesely
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our interpretation concerning the exemption from sales tax provided under LB 185, as amended. The exemption provided under the amended version of the bill applies to sales and use of the following:

Materials and replacement parts, except lubricants, used directly in the repair and maintenance of farm machinery, equipment, and tractors, used exclusively in a farming operation undertaken for profit, for the raising and feeding of livestock or poultry, or for producing milk for sale, except that materials and replacement parts used in the repair and maintenance of all-terrain (sic) vehicles, passenger cars, motorcycles, airplanes, and all trucks as defined in section 60-301 shall not be exempt.

In Kellogg Co. v. Herrington, 216 Neb. 138, 144, 343 N.W.2d 326, 330 (1984), the Nebraska Supreme Court set forth the following rules of statutory construction:

"A statute is not to be read as if open to construction as a matter of course." County of Douglas v. Board of Regents, 210 Neb. 573, 577, 316 N.W.2d 62, 65 (1982).
"Where words of a statute are plain and unambiguous, no interpretation is necessary to ascertain their meaning, and in the absence of anything to indicate to the contrary, words will be given their ordinary meaning." Hill v. City of Lincoln, 213 Neb. 517, 521, 330 N.W.2d 471, 474 (1983). Moreover, "[i]t is not within the

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province of a court to read a meaning into a statute that is not warranted by the legislative language. Neither is it within the province of the court to read anything plain, direct, and unambiguous out of a statute." Gaughen v. Sloup, 197 Neb. 762, 765, 250 N.W.2d 915, 917 (1977). In the construction of a statute which is clear and unambiguous, courts cannot supply missing language, and it is not within the court's power to read into a statute meaning which the clear language does not warrant. See, Omaha Public Schools v. Hall, 211 Neb. 618, 319 N.W.2d 730 (1982).

Upon consideration of these principles, we believe the plain meaning of the language employed in LB 185, as amended, evidences a legislative intent to grant an exemption only to materials and replacement parts ". . . used directly in the repair and maintenance of farm machinery, equipment, and tractors, used exclusively in a farming operation undertaken for profit, for the raising and feeding of livestock or poultry, or for producing milk for sale. . . ." The exception following the foregoing language, providing ". . . that materials and replacement parts used in the repair and maintenance of all-terrine (sic) vehicles, passenger cars, motorcycles, airplanes, and all trucks as defined in section 60-301 shall not be exempt," clearly precludes the availability of any exemption under this subsection for materials and replacement parts used in the repair and maintenance of any of the vehicles listed. Thus, in our view, the plain language of the amendment simply bars availability of the exemption for materials or replacement parts used in the repair and maintenance of these specific types of vehicles, under any circumstances.

Very truly yours,

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

APPROVED BY:


Attorney General