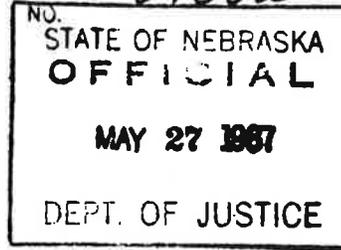


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

#87082



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

DATE: May 27, 1987

SUBJECT: Parental Liability and Court Jurisdiction Concerns
with LB 536 (Shoplifting)

REQUESTED BY: Senator Ernest Chambers, 1107 State Capitol

WRITTEN BY: Robert M. Spire, Attorney General
Linda L. Willard, Assistant Attorney General

You have asked this office whether LB 536 is violative of the Constitution as it relates to parental liability and accessibility to the Small Claims Court. It is our opinion that this bill does not violate the Constitution in these two areas.

First, you have asked whether LB 536 is violative of the Constitution by imposing liability on "parents" without making allowance for a noncustodial parent or one whose parental rights have been terminated by a court. We have determined no constitutional conflict in holding noncustodial parents to the same standard of liability for the acts of their children as custodial parents. In the same vein, parents whose rights have been terminated might still be liable for actions of their children prior to the termination of their rights. We find no constitutional infirmities with either of these. However, Neb.Rev.Stat. §43-293 states in relevant part:

An order terminating the parent-juvenile relationship shall divest the parent and juvenile of all legal rights, privileges, duties, and obligations with respect to each other . . .

Thus, parents whose parental rights have been terminated would have no legal obligation to pay under LB 536 from the date the termination becomes effective. If sued under the provisions of LB 536, the termination of parental rights would be a defense.

Your second question is whether the Legislature can constitutionally make the doors to the Small Claims Court more open to some than to the remainder of the public. Article V,

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Senator Ernest Chambers

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Section 1, of the Constitution of the State of Nebraska states in relevant part: "The judicial power of the state shall be vested in a Supreme Court, . . . and such other courts inferior to the Supreme Court as may be created by law." In State v. Magney, 52 Neb. 508, 72 N.W. 1006 (1897), the State Supreme Court determined that unless the Constitution provided otherwise, the Legislature could classify and regulate judicial powers and functions. Also, in Miller v. Janecek, 210 Neb. 316, 314 N.W.2d 250 (1982), the State Supreme Court determined that the court can only acquire jurisdiction through legislative enactment. In Simon v. Lieberman, 193 Neb. 321, 226 N.W.2d 781 (1975), the Nebraska Supreme Court upheld the right of the Legislature to create a Small Claims Court where informal hearings may be held.

The Constitution is the basis for the creation of the State Supreme Court and the state district and county courts. The Legislature may constitutionally create other courts inferior to the Supreme Court and may determine the jurisdiction and the roles and functions of those courts as long as they are not in conflict with the Constitution.

We find no constitutional infirmity with the section of LB 536 that makes the Small Claims Court "more open" to some than to other members of the public. The primary question is whether any member of the public is deprived of access to the court system. We find that the wording in LB 536 is in no way a denial of access to the courts. Nor do we find there is any invidious discrimination in LB 536 as it relates to access to the courts. The category singled out for "special treatment" in LB 536 is a legitimate category, is not based on a constitutionally protected class, and; as such, is not unconstitutional.

Sincerely,

ROBERT M. SPIRE
Attorney General


Linda L. Willard
Assistant Attorney General

LLW:bmh

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

APPROVED BY:


Attorney General