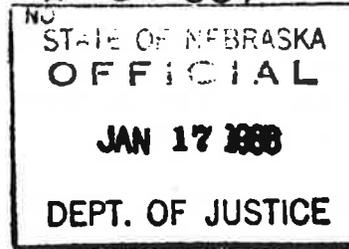


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

86 007



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

DATE: January 17, 1986

SUBJECT: LB 638, unconstitutional delegation of legislative authority to the United States Secretary of Agriculture.

REQUESTED BY: Senator Donald Eret
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
John Boehm, Assistant Attorney General

This is in response to your letter of December 2, 1985. In that letter you ask us to reconsider our letter to Senator Rod Johnson of April 12, 1985, (copy enclosed), concerning LB 638. That letter simply stated that we had the same objections to LB 638 as we had to LB 551 (1983) as set forth in Attorney General Opinion No. 40, March 9, 1983.

LB 638 would adopt the parity prices established by the United States Secretary of Agriculture as a basis for the minimum sale prices of certain commodities in Nebraska. The parity prices are calculated by the Secretary of Agriculture pursuant to 7 U.S.C.A. §1301. As we read these provisions of federal law, they grant considerable discretion to the Secretary in establishing these parity prices. This calculation is not simply a mathematical process.

The law in Nebraska is clear that the Nebraska Legislature cannot delegate its legislative authority to be exercised by administrative officials, be they the state or federal officials. Smithberger v. Banning, 129 Neb. 651, 262 N.W. 492 (1935), Lincoln Dairy Company v. Finigan, 170 Neb. 777, 104 N.W.2d 227 (1960). This is what LB 638 does, by granting discretionary authority to the Secretary of Agriculture who calculates parity prices, which in turn determine the minimum sale prices for the State of Nebraska.

The fact that the Nebraska Legislature may be in session when such prices are calculated by the Secretary is not relevant. Once the law has been enacted, it constitutes a delegation of

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William L. Howland
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Senator Donald Eret
January 17, 1986
Page -2-

legislative authority. The mere fact that the Legislature might act in the future to change this law if it should disagree with the actions taken by the Secretary is of no consequence. The law would be unconstitutional as enacted.

For the foregoing reasons, we reaffirm our opinion No. 40, dated March 9, 1983, and our letter to Senator Rod Johnson, dated April 12, 1985, concerning LB 638.

Sincerely,

ROBERT M. SPIRE
Attorney General



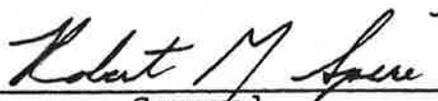
John Boehm
Assistant Attorney General

JB/bae

Enclosure

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

APPROVED:


Robert M. Spire
Attorney General

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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April 12, 1985

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

Senator Rod Johnson
1114 State Capitol
Lincoln, NE 68509

Re: LB 638

Dear Senator Johnson:

You have asked about the constitutionality of LB 638 which would require the Director of Agriculture to establish prices for corn, grain, sorghum, wheat, soybeans, barley, dry beans, and milk.

From our research, we find that the mechanics for establishing prices under the provisions of LB 638 are for all practical purposes the same as those for the establishment of minimum prices provided in LB 551 of the 1983 Session of the Legislature.

In answer to a question concerning the constitutionality of the provisions of LB 551 (1983), we concluded that "to the extent that the Legislature has granted two federal agencies powers which are reserved to the Legislature itself, the bill would be constitutionally suspect." See, Attorney General's Opinion No. 40, March 9, 1983, Legislative Journal 1983, Page 870.

After examining our previous Opinion, we find no reason to arrive at a different conclusion with regard to the provisions of LB 638.

Very truly yours,

ROBERT M. SPIRE
Attorney General

Bernard L. Packett
Assistant Attorney General

BLP:bmh

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

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