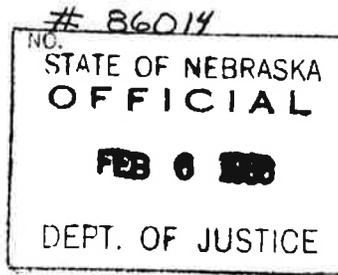


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



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

DATE: February 5, 1986

SUBJECT: Constitutionality of LB 761 -- Double Taxation

REQUESTED BY: Senator Emil E. Beyer, Jr.
Nebraska State Legislature

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

This is in response to your request for an opinion on the constitutionality of LB 761. Your concern is whether this bill would require double taxation for citizens affected by its provisions.

LB 761 provides for continued jurisdiction by a fire protection district over territory annexed by a city or village, either by agreement with the municipality, or as a result of a district court ruling. In regard to the issue of taxation, the bill provides specifically as follows:

Nothing contained in this section shall authorize any district to levy any taxes or special assessments within the annexed area after the effective date of an annexation, except that if a city or village and a fire protection district agree or a court orders that the boundaries of the fire protection district shall continue to include all or a portion of the territory annexed by the city or village, the fire protection district shall have authority to continue to levy taxes in such territory, and the city or village shall exclude from its tax levy on real property in such territory any assessment for fire, rescue, or similar services provided by the fire protection district.

Assuming that the municipalities can determine that portion of their tax levy which is allocated for fire, rescue, or similar services provided by the fire protection district, the bill would specifically preclude double taxation on real estate. The provision as written, however, applies only to real property, and thus any personal property in the district would be subject to

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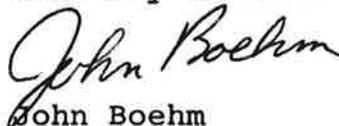
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Senator Emil E. Beyer, Jr.
February 5, 1986
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the burden of double taxation. Taxes would not be levied "uniformly and proportionately" on all property and the bill would nevertheless be unconstitutional from this standpoint.

Sincerely,

ROBERT M. SPIRE
Attorney General

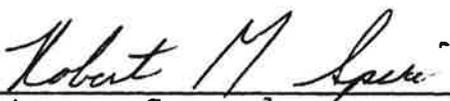


John Boehm
Assistant Attorney General

JB/bae

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

APPROVED:


Attorney General