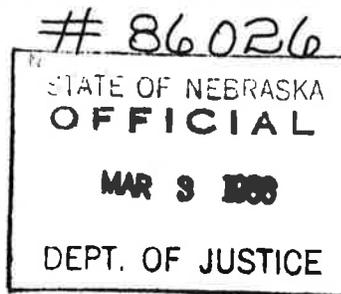


DEPARTMENT OF JUSTICE

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 28, 1986

SUBJECT: LB 949 Classification of Public Power Districts
and Apportionment by Population or Number of
Electors.

REQUESTED BY: Senator D. Paul Hartnett
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Yvonne E. Gates, Assistant Attorney General

The proposed amendments to LB 949 permitting public power districts that serve 50 or less counties to establish election districts at the discretion of the board of directors, based on either population or numbers of electors are constitutionally impermissible. Article I Section 22 of the Nebraska Constitution does not apply to public corporations exercising only proprietary functions. Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966). However, legislative classification, to be valid, must be based on a difference of situation or circumstance that reasonably necessitates diverse legislation between the classes. In Wittler the Nebraska Supreme Court invalidated a law establishing a grid system for all public power districts operating in more than 15 counties, because there was no basis for treating the electors of some counties differently than other counties similarly situated. Unless the Public Works Committee can point to a rational basis for drawing the dividing line at 50 counties the proposed classification is unconstitutionally arbitrary.

The delegation to the board of directors of the district to provide the subdivision from which directors are to be elected or appointed violates Article III Section 1 of the state constitution. The fixing of boundaries of a political subdivision for public purposes is a legislative function. The Legislature may authorize the organization of districts to other governmental bodies. Nickel v. School Board of Axtell, 157 Neb. 813, 61 N.W.2d 566 (1953). Yet, when the Legislature delegates such power it must provide reasonable guidelines and standards. Williams v. County of Buffalo, 181 Neb. 233, 147 N.W.2d 776

L. Jay Bartel
John M. Boehm
Dale D. Brodkey
Martel J. Bundy
Janie C. Castaneda

Dale A. Comer
Laura L. Freppel
Lynne R. Fritz
Ruth Anne E. Galter
Yvonne E. Gates

Jill Gradwohl
Calvin D. Hansen
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson

Mel Kammerlohr
Sharon M. Lindgren
Charles E. Lowe
Harold I. Mosher
Bernard L. Packett

Terry R. Schaaf
LeRoy W. Sievers
Mark D. Starr
John R. Thompson
Linda L. Willard

Senator D. Paul Hartnett
February 28, 1986
Page -2-

(1967). The question of how far the Legislature should go in providing the details are issues of policy in which the Legislature has wide discretion. But those guidelines ". . . must be adequate, sufficient and definite for the guidance of the agency in the exercise of the power conferred upon it and must be sufficient to enable those affected to know their rights and obligations." State v. Nebraska Mortgage Finance Fund, 204 Neb. 444, 465, 283 N.W.2d 12 (1979). LB 949 as amended grants legislative authority to the board of directors to be exercised upon a finding that "it is in the best interest of the district and its customers" to provide for subdivisions based on the number of electors rather than population. The Legislature has established no standards nor any basis for such a determination. The board is not given any factors which should or must be considered. Unbridled delegation of legislative power is contrary to state law.

Establishing districts on the basis of electors is as valid as districts based on population when there is a legitimate reason for such action. Likewise the frequency of redistricting is a matter of legislative prerogative that only needs to satisfy the rational basis test.

Sincerely,

ROBERT M. SPIRE
Attorney General

Yvonne E. Gates
Yvonne E. Gates
Assistant Attorney General

YEG/bae

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

APPROVED:

ACW
Attorney General *for*