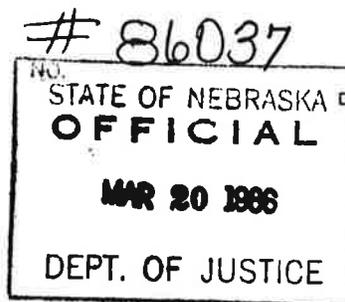


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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DATE: March 19, 1986

SUBJECT: Constitutionality of LB 1176 Under Article VIII  
§1A of the Nebraska Constitution

REQUESTED BY: Senator Rod Johnson  
Nebraska State Legislature

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

This is in response to your letter of February 11, 1986, in which you ask for an opinion on the constitutionality of §18 of LB 1176 under Article VIII, Section 1A of the Nebraska Constitution.

Section 18 of LB 1176 would authorize the Director of Agriculture to levy a fee upon those receiving services under the Animal Damage Control Program. This fee would be for actual services rendered under the program and could be levied against counties, in addition to individuals, corporations, or associations receiving those services.

Article VIII, Section 1A of the Nebraska Constitution provides that "The state shall be prohibited from levying a property tax for state purposes." As the court noted in State ex rel. Western Technical Community College Area v. Tallon, 196 Neb. 603 at 606, 244 N.W.2d 183, (1976)

When Article VIII, section 1A, of the Constitution of Nebraska, was adopted in its original and amended form, its purpose was to require the state, after the adoption of sales and income taxes, to leave the property-tax field. No state interest or function could then be financed by means of property taxes, but all traditional state interests and functions must be financed by means other than property taxes.

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The court has further noted that "The question of whether an act of the Legislature pertains to state purposes or local purposes is a judicial question. There is no sure test by which state purposes may be distinguished from local. This court must consider each case as it arises and draw the line of demarcation." State ex rel. Western Nebraska Technical Community College Area v. Tallon, 192 Neb. 201 at 211, 219 N.W.2d 544 (1974). In this regard, the court has noted that

The levy of a property tax by a local governmental unit should not be treated as a state levy for state purposes merely because the Legislature has authorized or required the local governmental unit to make the levy. Neither should the fact that the tax is for a "governmental" purpose make it automatically for state purposes rather than local.

R-R Realty Company v. Metropolitan Utilities District, 184 Neb. 237 at 240, 166 N.W.2d 746 (1969). This test, particularly where state and local purposes may be commingled, is whether the controlling and predominant purposes are state purposes or local purposes. State ex rel. Western Nebraska Technical Community College Area v. Tallon, supra.

We have great difficulty concluding that the services provided here upon request of individuals or counties under the Animal Damage Control Program are predominantly state purposes, rather it would seem that the benefits are purely local in nature. This is particularly true when these services are only obtained by an actual request from the particular locality or individuals seeking such services. Consequently it would seem that the predominant purposes to be served by this legislation are primarily local purposes.

We would also be remiss if we did not point out as the court did in Kovarik v. County of Banner, 192 Neb. 816, 224 N.W.2d 761 (1975), that this particular act does not require the county to levy a property tax for this particular service. Obviously, however, the fees will be paid out of the county general fund.

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But, "we also wish to point out that counties are not supported solely by property taxes. There are other sources of revenue available to the counties other than property taxes, . . ." Id. at 824. One thus could not conclude, that property taxes would necessarily have to be levied to pay the fees for these services if and when they are requested and received by the county.

For the foregoing reasons we must thus conclude that this provision is not unconstitutional pursuant to Article VIII, Section 1A of the Nebraska Constitution.

Sincerely,

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John Boehm  
Assistant Attorney General

JB:jem

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

1/01

APPROVED:



Attorney General