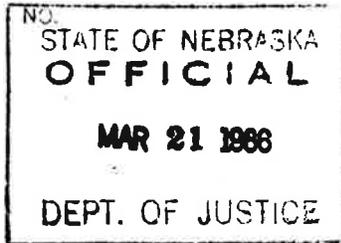


DEPARTMENT OF JUSTICE
STATE OF NEBRASKA
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86038



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

DATE: March 21, 1986

SUBJECT: Selected Members of the Legislature and of the General Public Serving, Without Salary, on an Advisory Educational Planning Committee Created by Statute

REQUESTED BY: Senator Dennis Baack
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Harold Mosher, Assistant Attorney General

If it were to become operative law, LB 997 (as amended) of the Eighty-ninth Legislature, Second Session (1986), would authorize the establishment of an educational service unit planning committee of twelve members. Four members would be appointed from the general public by the State Board of Education. Eight members would be appointed by the Executive Board of the Legislative Council, of which four would be from the general public and four would be from the Legislature. Members of the planning committee would receive no salary but would be reimbursed "for expenses pursuant to sections 84-306.01 to 84-306.05 for state employers." Section 7, 8, and 9 of this legislative bill (which create the planning committee and prescribe its duties) "terminate on January 1, 1987." You have asked if sections 7, 8, and 9 of LB 997 are constitutional and in particular if the sections cited violate section 9 of Article III of the Constitution of Nebraska.

We note the following. The planning committee, authorized by LB 997, is not given any executive duties which involve the rights, duties or privileges of others. The initial date the planning committee is to meet, the frequency of its meetings or where it is to meet is not stated. Its expenses, which are unknown, would be paid out of state funds. The duties of the planning committee include the establishment of a plan for the future role and structure of educational service units and to present the plan to the State Board of Education and to the Educational Committee of the Legislature by a date certain. Any such plan would be merely advisory. Thus, arguably, membership on the planning committee would not be a state office and therefore section 9 of Article III of the Constitution of

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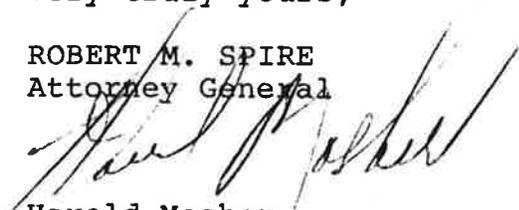
Senator Baack
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Nebraska would not be violated if this legislative bill were to become operative law.

Section 7 of LB 997 appears to be flawed, however, for a different reason. That section states that the twelve members of the planning committee "shall be representative of all geographic areas of the state." LB 997 does not, however, define what constitutes the "geographic areas of the state" and therein is a flaw. There is simply no way to determine, pursuant to LB 997, what constitutes "all the geographic areas of the state" from which the members of the planning committee are to be representative of. Nor is there any way to determine, pursuant to LB 997, how the appointments are to be made from those areas by the two different appointing authorities. In other words, it appears to us that section 7 of LB 997 requires the doing of an act (appointing members to the planning committee) in terms so vague (representative of all geographic areas of the state) that men of common intelligence must necessarily guess at its meaning and differ as to its application. It would therefore appear that the amendment to LB 997 is void for vagueness. See, In the Interest of D. L. H., 198 Neb. 444, 253 N.W.2d (1977) and State ex rel. Douglas v. Herrington, 206 Neb. 516, 294 N.W.2d 330 (1980). Accordingly, we are of the opinion that sections 7, 8, and 9 of LB 997, as amended, are unconstitutional.

Very truly yours,

ROBERT M. SPIRE
Attorney General


Harold Mosher
Assistant Attorney General

HM:jem
cc: Patrick J. O'Donnell
Clerk of the Legislature
1/02

APPROVED:


Attorney General