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

86044
STATE OF NEBRASKA
OFFICIAL
APR 4
DEPT. OF JUSTICE

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

DATE: April 4, 1986

SUBJECT: Constitutionality of LBs 516, 529, 153 and Amendment to LB 122

REQUESTED BY: Senator Rex Haberman
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding the constitutionality of several bills currently pending before the Legislature. Initially, you ask whether either LBs 516, 529, or 153, in their present forms, would violate the requirement of Article III, Section 14 of the Nebraska Constitution, that the subject of a bill "shall be clearly expressed in the title".

It is well-established that a court will not hold legislation in violation of the title provision of Article III, Section 14 if the title calls attention to the subject matter of the bill, and the portion of the bill challenged is germane to the purpose announced in the title. Blackledge v. Richards, 194 Neb. 188, 192, 231 N.W.2d 319, 323 (1975). The Nebraska Supreme Court has adopted a very liberal construction with respect to this constitutional requirement. For example, in Spier v. Thomas, 131 Neb. 579, 269 N.W. 61 (1936), the Court held a title providing for "An act relating to municipal courts" was sufficient to permit the inclusion of a section providing for the eligibility of judges of such courts.

The title to LB 516 expresses the bill relates "to courts"; that it amends Neb.Rev.Stat. §§25-1062.01, 25-1064, and 43-2,125 (Reissue 1979 and Reissue 1984); and, in addition, that the bill proposes "to change provisions relating to judicial vacancies", and "to authorize temporary restraining orders without notice as prescribed". You have requested us to consider whether the provisions of LB 516 regarding amending certain statutory provisions relating to temporary restraining orders, and the designation of district or county court judges to serve upon the absence of separate juvenile court judges, are in conformance with the title requirement of Article III, Section 14.

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

Sections 10 through 13 of LB 516, which provide for the amendment of §§25-1062.01 and 25-1064 pertaining to the issuance of temporary restraining orders and injunctive relief, are germane to the subject matter announced in the title. Section 15, which provides for the amendment of §43-2,125 relating to the appointment of a district or county court judge to serve during the absence of a separate juvenile court judge, is also within the subject matter, and is germane to the purpose announced in the title. Accordingly, we do not believe these provisions of LB 516 violate the title provision of Article III, Section 14.

You have also requested us to consider whether either LB 529 or LB 153 violate the title requirement of Article III, Section 14. Your request does not address which specific provisions of either bill you believe may fail to satisfy this requirement. Nevertheless, we have reviewed the contents of both bills, and, in our opinion, the provisions of each bill are sufficiently germane to the purpose announced in each of their respective titles so as to satisfy the title provision of Article III, Section 14.

Finally, you have requested our opinion as to the constitutionality of a proposed amendment to LB 122. Generally, LB 122 would amend Neb.Rev.Stat. §39-6,181 (Reissue 1984), which relates to the issuance of certain special permits for the operation of motor vehicles exceeding maximum weight and length limitations. The proposed amendment to LB 122 would remove language providing for the granting of special permits for vehicles carrying "grain or other seasonally harvested products", and would instead limit this provision to vehicles carrying "sugar beets".

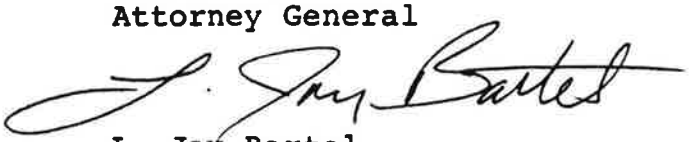
The principal constitutional issue raised by the proposed amendment to LB 122 is one of unreasonable classification. "A legislative classification will be upheld against constitutional attack if it bears some reasonable relationship to the legitimate purposes of the legislation." Pegasus of Omaha, Inc. v. State, 203 Neb. 755, 759, 280 N.W.2d 64, 67 (1979).

Upon examination of the proposed amendment to LB 122, we are unable to perceive any rational basis for limiting the granting of special permits to vehicles hauling only sugar beets under the

conditions specified. There appears to be no reasonable basis for distinguishing between sugar beets and other harvested agricultural products in relation to the purpose of this legislation. Under these circumstances, it is our opinion that the proposed amendment to LB 122 would be held unconstitutional as establishing unreasonable class legislation, in violation of Article III, Section 18 of the Nebraska Constitution.

Very truly yours,

ROBERT M. SPIRE
Attorney General



L. Jay Bartel
Assistant Attorney General

LJB:jem

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

1/05

APPROVED:

Attorney General