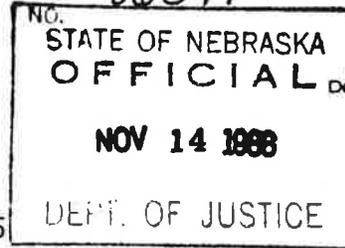


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

# 86077



ROBERT M. SPIRE  
Attorney General  
EUGENE CRUMP  
Deputy Attorney General

DATE: November 13, 1986

SUBJECT: Constitutionality of Sales Tax Exemption for Farm Machinery and Repair Parts

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 proposed legislation to provide a sales tax exemption for purchases of farm machinery and repair parts. You state that the proposed exemption would be similar to the sales tax exemption presently granted under Neb.Rev.Stat. §77-2702(11)(f) (Supp. 1985) on purchases of materials and replacement parts used to repair, maintain, or manufacture railroad rolling stock and common or contract carrier vehicles. Your specific question is whether the granting of such a sales tax exemption for farm machinery and repair parts would violate the uniformity and proportionality requirements of Article VIII, §1 of the Nebraska Constitution.

Article VIII, §1, provides in part as follows:

The necessary revenue of the state and its governmental subdivisions shall be raised by taxation in such manner as the Legislature may direct. Taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises. . . . Taxes, other than property taxes, may be authorized by law. . . .

As a general rule, statutes imposing sales taxes are considered to be in the nature of excise taxes, and not property taxes. Therefore, statutes imposing sales taxes have been held not violative of constitutional declarations providing that taxes on property must operate equally or uniformly upon the same class of subjects, because such constitutional provisions apply only to property taxes, and not to excise taxes. 68 Am.Jur.2d Sales and Use Taxes §§4, 27 (1973).

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Recently, in State v. Galyen, 221 Neb. 497, 378 N.W.2d 182 (1985), the Nebraska Supreme Court held that a fee of \$.25 per head to be collected on all cattle sold in Nebraska was an excise tax, and, therefore, was not required to be enforced uniformly and proportionately by virtue of Article VIII, §1, as these requirements apply only to property taxes. In reaching this conclusion, the court stated the following regarding the interpretation of Article VIII, §1:

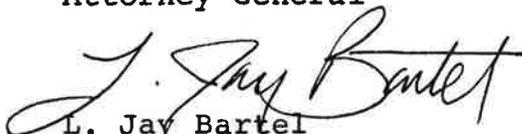
In Anderson v. Tiemann, 182 Neb. 393, 155 N.W.2d 322 (1967), we held that a tax imposed upon the privilege of doing business and called a franchise tax was in fact an excise tax and not a property tax and, as such, was not required to be levied by valuation uniformly and proportionately. Such a view is totally consistent with the language of Neb. Const. art. VIII, §1. To begin with, article VIII, §1, provides that "[t]he necessary revenue of the state and its governmental subdivisions shall be raised by taxation in such manner as the Legislature may direct." (Emphasis supplied.) By such direction the Legislature is not limited to imposing property taxes but may, in fact, impose taxes other than property taxes. Moreover, article VIII, §1, further provides that "[t]axes, other than property taxes, may be authorized by law." These two provisions make it clear that all taxes need not be property taxes. A further reading of article VIII, §1, makes it clear that only property taxes must be uniform and proportionate. The language of the Constitution reads: "Taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises. . . ." If article VIII, §1, consisted only of that sentence, one might argue that "taxes" refers to all taxes. But when it is read with the preceding sentence, which states that "[t]he necessary revenue of the state and its governmental subdivisions shall be raised by taxation in such manner as the Legislature may direct," and which is followed by the language "[t]axes, other than property taxes, may be authorized by law," it becomes clear that the reference to "taxes" which must be levied uniformly and proportionately refers to taxes upon "all tangible property and franchises" as a property tax and not as an excise tax. . . . We therefore believe that as an excise tax its imposition need not be uniform and proportionate but, as here, may be upon each transaction.

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Therefore, as sales taxes are, by nature, excise taxes, their imposition is not subject to the uniformity and proportionality requirements of Article VIII, §1 of the Nebraska Constitution, which apply only to property taxes. Accordingly, we conclude the sales tax exemption you propose on transactions involving farm machinery and repair parts would not raise any potential violation of this particular constitutional provision.

Sincerely,

ROBERT M. SPIRE  
Attorney General

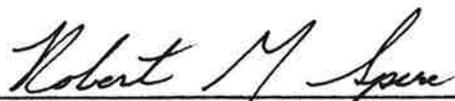
  
L. Jay Bartel  
Assistant Attorney General

JLB:jem

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

2/04

APPROVED:

  
\_\_\_\_\_  
Attorney General