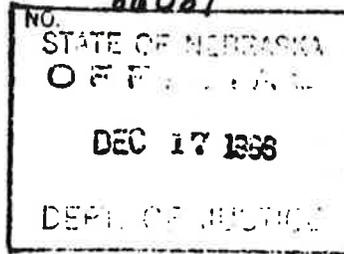


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



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

DATE: December 8, 1986

SUBJECT: State Employees Appointment to State Agency Boards

REQUESTED BY: Senator Rex Haberman

WRITTEN BY: Robert M. Spire, Attorney General; Linda L. Willard, Assistant Attorney General

You have requested an opinion of this office regarding the constitutionality of proposed legislation prohibiting the appointment of persons to state agency boards when those persons are either employees or under contract with the particular state agency. We have determined that there is no constitutional problem with excluding state employees and those under contract with state agencies from appointment to state agency boards as long as it does not unreasonably restrict the Governor's right to appoint.

In Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966), the Nebraska Supreme Court held:

The right of the Legislature to prescribe reasonable qualifications of one to be appointed to office is not disputed. But the Legislature is prohibited by constitutional provision from appointing officers whose offices are created by law, either directly or indirectly. The provisions of the Act which limit the appointment of grid system directors by the Governor to a certain unnamed individual or to a limited few, is an encroachment by the Legislature upon the powers of the Governor and is void as violative of Article IV, section 10, of the Constitution of Nebraska.

As long as a prohibition on appointment of specific classes of individuals does not unduly restrict the field of individuals from whom the Governor may appoint, we see no constitutional problems with such a restriction. The Governor's right to appoint individuals to offices and committees is in the Constitution of the State of Nebraska and in state statutes and the legislative role is to set the qualifications and, where required by the Constitution or state statute, to approve the

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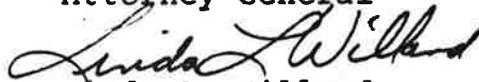
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Governor's appointment. The Legislature cannot make the appointments by so restricting the Governor's selection that he has no real choice in his selection. The Legislature cannot do indirectly what it cannot do directly. Gaffney v. State Department of Education, 192 Neb. 358, 220 N.W.2d 550 (1974). As long as the qualifications placed on an appointee do not unduly restrict the Governor's power of selection and appointment, they would not be unconstitutional.

Passage of the type of legislation you have suggested would necessarily require coordination with other statutes currently existing which require agency representation on the advisory board for the various state agencies.

Sincerely,

ROBERT M. SPIRE
Attorney General

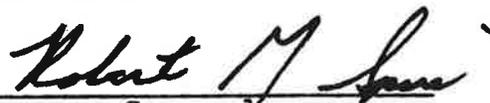


Linda L. Willard
Assistant Attorney General

LLW:bmh

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

APPROVED BY:


Attorney General