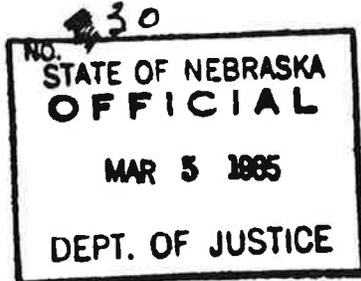


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



ROBERT M. SPIRE
Attorney General

March 5, 1985

A. Eugene Crump
Deputy Attorney General

Senator Howard Lamb
Nebraska State Legislature
2004 State Capitol
Lincoln, Nebraska 68509

Dear Senator Lamb:

You have asked if AM0074 to LB 662 of the Eighty-ninth Legislature, First Session (1985), as amended has constitutional problems.

AM0074 to LB 662, as published in the Legislative Journal for February 4, 1985, at pages 456 to 457, was amended on February 19, 1985, to read as follows:

1. Strike original sections 1 and 19 and insert the following new section:

Sect. 15. Notwithstanding any other provision of sections 1 to 6 of this act or Chapter 79, after the effective date of this section, whenever the question of closing an elementary school attendance site is raised following a reorganization governed by section 79-402, the Reorganization of School Districts Act, or sections 79-426.23 to 426.26 in which a school district has attached itself as a whole to a Class II, III, IV, or V school district or has become part of a Class VI school district, such elementary school attendance site shall not be closed unless a majority of the qualified electors of such school district, as it existed prior to reorganization, vote pursuant to subsections (2) to (4) of section 79-426.15 to close such site. Approval of a proposition to close an elementary school attendance site shall require a majority of all qualified electors voting at a special election called for such purpose.

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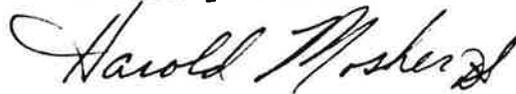
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Senator Howard Lamb
March 5, 1985
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Obviously, if a school district has attached itself as a whole to a Class II, III, IV, or V school district or has become a part of a Class VI school district and years later a question is raised as to whether to close an elementary school attendance site, there could be a difficult, if not impossible, task in determining "the qualified electors of such school district, as it existed prior to reorganization. . . ." The reason, of course, is that there is no known legal procedure by which such "qualified electors" could be determined. There is yet another problem. If the identity of the "qualified electors" could somehow be determined but it was discovered that one or more had subsequently established a residence outside the boundaries of the "school district, as it existed prior to reorganization," a court could find that this amendment is unconstitutional in that it would permit "electors" to vote who are not residents of the "school district, as it existed prior to reorganization." We are therefore of the opinion that there are several constitutional problems with this amendment.

Very truly yours,

ROBERT M. SPIRE
Attorney General



Harold Mosher
Assistant Attorney General

HM:ejg

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