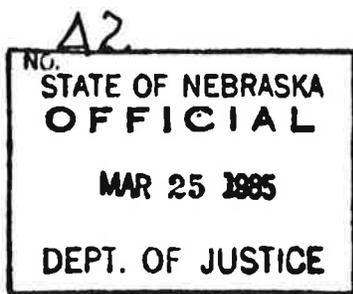


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



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

March 22, 1985

Senator Vard R. Johnson  
Nebraska State Legislature  
State Capitol  
Lincoln, Nebraska 68509

Dear Senator:

This is in response to your letter of March 12, 1985, requesting an opinion on the constitutionality of imposing the Nebraska Sales and Use Tax on the purchase of magazines and journals and the purchase of subscriptions to such materials. Your specific question is whether such taxation infringes upon the constitutional right of freedom of the press.

The courts have routinely held that such taxes do not constitute a restraint upon the freedom of the press and hence a deprivation of due process where the legitimate purpose of the tax is to raise revenue and such sales are not singled out for taxation. Giragi v. Moore, 49 Ariz. 74, 64 P.2d 819, 110 A.L.R. 320, appeal dismissed, 301 U.S. 670, 81 L.Ed. 1334, 57 S.Ct. 946 (1937); Shoppers Guide Pub. Co., Inc. v. Woods, 547 S.W.2d 561 (Tenn. 1977); and Arizona Pub. Co. v. O'Neil, 22 F.Supp. 117, aff'd, 58 S.Ct. 950, 304 U.S. 543, 82 L.Ed. 1518 (1937). The Nebraska Sales and Use Tax would appear to fall within the guidelines set forth in these cases, since the sole purpose of the tax is for the general raising of revenues for the operation of state government and neither its intent nor its effect is to act as a prior restraint upon publication. Therefore, such

L. Jay Bartel  
John M. Boehm  
Dele D. Brockey  
J. Kirk Brown  
Martel J. Bundy  
Dele A. Comer

Timothy E. Davis  
Lynne R. Fritz  
Ruth Anne E. Galter  
Jill Gradwohl  
Calvin D. Hansen  
Royce N. Harper

Marilyn B. Hutchinson  
Mel Kammerlohr  
Sharon M. Lindgren  
Charles E. Lowe  
Harold I. Mosher  
Patrick T. O'Brien

Bernard L. Packett  
Terry R. Schaaf  
LeRoy W. Sievers  
Mark D. Starr  
John R. Thompson  
Linda L. Willard

Senator Vard R. Johnson  
March 22, 1985  
Page -2-

legislation would not constitute an impermissible infringement upon the right of freedom of the press.

Sincerely,

ROBERT M. SPIRE  
Attorney General



John Boehm  
Assistant Attorney General

JB:ejg

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