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

ROBERT M. SPIRE
Attorney General
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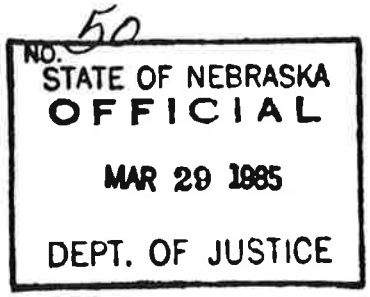
Deputy Attorney General

March 29, 1985



Senator R. Wiley Remmers
Nebraska State Legislature
State Capitol
Lincoln, NE 68509

Dear Senator Remmers:

This is in response to your letter of March 26, 1985, concerning the constitutionality of your proposed amendment to LB 158. This amendment provides as follows:

> A buyer who purchases farm products, including livestock, or a person who sells farm products, including livestock, for another for a fee or commission shall pay the seller the total purchase price by means of a check payable to such seller and a financial institution who shall be specified by such seller, and if the financial institution authorizes the cashing of such check, such buyer or person shall be free of any security interest in such farm products, including livestock, held by any security interest holder up to the amount of the check. The financial institution whose name appears on the check and who authorizes the cashing of the check shall be liable to the lienholder for the amount of the check. Any such buyer or person who does not include the name of a financial institution on such check shall take such farm products, including livestock, subject to any valid security interest which may exist in such farm products, including livestock.

We see no apparent constitutional problems with this amendment. We would note, however, that the procedure outlined in this amendment may be unavailable to buyers in transactions subject to the regulations enacted pursuant to the Federal Packers and Stockyards Act, 7 U.S.C.A. 181 et seq. Specifically,

L. Jay Bartel
John M. Boehm
Dale D. Brodkey
J. Kirk Brown
Martel J. Bundy
Dale A. Comer
Timothy E. Divis
Lynne R. Fritz
Ruth Anne E. Galter
Jill Gradwohl
Calvin D. Hansen
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Sharon M. Lindgren
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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

9 C.F.R. 201.39 prohibits payment for livestock in such transactions to anyone other than the owner or valid security interest holder of such livestock.

Sincerely,

ROBERT M. SPIRE
Attorney General

John Boehm
Assistant Attorney General

JB/bae

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