

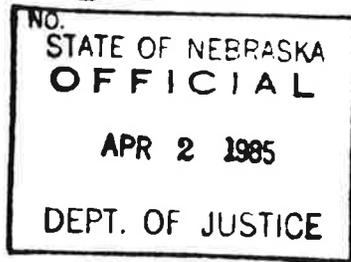
Charlie Adams

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

52



March 28, 1985

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

Senator Tom Vickers
Nebraska State Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Senator Vickers:

This is in response to your letter of March 22, 1985, concerning the committee amendments to LB 459. These amendments would return jurisdiction over noxious weeds to the Department of Agriculture and give the director of that department the authority to decide if a county is in compliance with the weed control laws of the state. The amendment further provides that:

When it is determined by the director that a control authority has failed to carry out any of its duties and responsibilities as a control authority, the Attorney General shall notify the State Treasurer to withhold allocation of funds distributed under section 39-2402 until notified by the director that the control authority has properly enforced sections 2-952 to 2-965.

Your question is whether such a procedure is constitutional. We have no concerns about the mechanism for withholding funds for failure to enforce the laws. Such procedures are now available in other situations under state law.

We do, however, have some concerns as to the fundamental requirements of due process afforded by this amendment. The decision to withhold funds would here be made solely upon the determination of the director that the local weed control authority was not in compliance with the state law. There are no procedures for any notice or hearing as a result of such a

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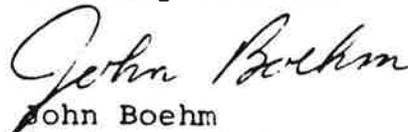
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Senator Tom Vickers
March 28, 1985
Page -2-

determination as in similar existing statutory schemes. See, for example, Neb.Rev.Stat. §77-378 (Reissue 1981). From this standpoint, without such procedural due process safeguards, the amendment is constitutionally suspect.

Sincerely,

ROBERT M. SPIRE
Attorney General



John Boehm
Assistant Attorney General

JB:ejg

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