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DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

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NO. 63  
STATE OF NEBRASKA  
OFFICIAL  
APR 18 1985  
DEPT. OF JUSTICE

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

April 17, 1985

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

Dear Senator Lamb:

You have asked if section 12 of LB 662 of the Eighty-ninth Legislature, First Session (1985), which is on final reading, is constitutional. That section states as follows:

Sec. 12. Notwithstanding any other provision of sections 1 to 6 of this act or Chapter 79, after the operative 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 79-426.26 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 who, on the date of the election provided for in this section, reside within the boundaries of such school district, as it existed prior to reorganization, vote pursuant to section 13 of this act 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.

If such school district divides and the various portions join more than one school district pursuant to this act, such elementary school attendance site shall not be closed unless a majority of the voters who, on the date of the election provided for in this section, reside in the portion of such school district, as the boundaries of such district existed

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prior to the reorganization, which contains such elementary school attendance site vote to close such site.

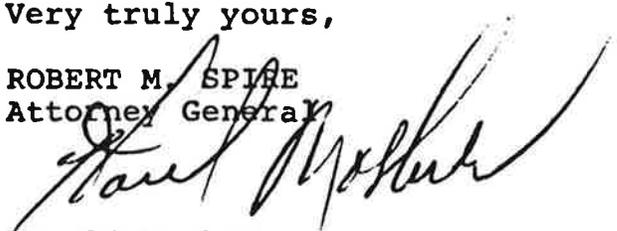
For purposes of this section, elementary school attendance site shall mean an elementary school site in a school district which has been required to merge with or become a part of another school district pursuant to section 1 of this act or section 79-701.

In connection with section 12 of LB 662, which is quoted above, you specifically ask if the Legislature can constitutionally establish a procedure which grants to one portion of a school district a privilege not enjoyed by the school district as a whole. The same is hereinafter discussed.

Section 12 is not particularly precise but it would appear that pursuant thereto that whenever a question is raised which pertains to the closing of an elementary school attendance site following certain types of school district reorganizations, the elementary school attendance site could not be closed unless a majority of the qualified electors who reside within the boundaries of such school district, as it existed prior to reorganization and who operated the elementary school, vote to close it. Thus, the electors who reside within the boundaries of particular school districts, as the same existed prior to reorganization, would be granted the right to determine if an elementary school attendance site therein will be maintained at the expense of a newly reorganized school district as a whole and notwithstanding that some (perhaps even a majority) of the electors of the newly reorganized school district would not be permitted to vote on that question. We have previously offered our opinion that it could be argued that such procedure is not in conformity with the legal concept of one elector one vote. We adhere thereto. Accordingly, we are of the opinion that the constitutionality of section 12 of LB 662 would be very difficult to defend.

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