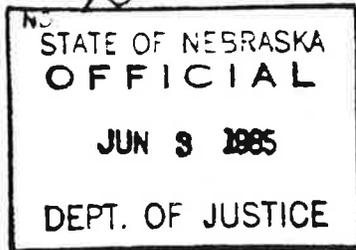


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



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

June 3, 1985

Senator Chris Beutler
Nebraska State Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Senator Beutler:

This is in response to your letter of May 20, 1985, concerning LB 516. Your specific question relates to the Commission on Judicial Workloads created in section 1 of LB 516. For the purposes of your opinion we are assuming that the Lamb amendment to this bill has been stricken and that the Commission on Judicial Workloads is empowered, as set out in Amendment No. 1408, to change the number of election districts, the boundaries of the election districts, and the number of judges who will serve in each election district.

In Opinion No. 86, May 22, 1985, we found that the authority granted to this Commission constituted the delegation of a legislative function. We further found this section to be unconstitutional as a violation of the doctrine of separation of powers found in Article II, Section 1, of the Nebraska Constitution because it called on members of the judiciary as part of the Commission on Judicial Workloads to exercise legislative functions.

Your question is whether the inclusion of members of the Nebraska State Bar Association on this Commission is a proper delegation of authority under Article II, Section 1, of the Nebraska Constitution. The Nebraska Supreme Court has long maintained that the Legislature may not delegate legislative functions to private individuals. Elliott v. Wille, 112 Neb. 78, 200 N.W. 347 (1924), and Searle v. Yensen, 118 Neb. 835, 226 N.W. 464, 69 A.L.R. 257 (1929). On the other hand, the courts have indicated that the Legislature may delegate some of its

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LB 516 would provide that the three Bar Association members are to be appointed by the Executive Council of the Nebraska State Bar Association. This would be a clear violation of Article IV, Section 10, of the Nebraska Constitution, since such appointments must be made by the Governor.

Very truly yours,

ROBERT M. SPIRE
Attorney General



John Boehm
Assistant Attorney General

JB:ejg

cc Patrick J. O'Donnell
Clerk of the Legislature