

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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June 4, 1985

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Attorney General
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Deputy Attorney General

Senator William E. Barrett
Nebraska State Legislature
State Capitol, Room 1010
Lincoln, Nebraska 68509

Dear Senator:

This is in response to your letter of June 3, 1985, concerning LB 157.

Your first concern with LB 157 deals with Section 1 (5) and (6) which, in essence, excludes third party insurance carriers and state or political subdivisions from the prejudgment interest provisions of LB 157. Your question is whether or not this is a rational classification. Of course, the courts have repeatedly indicated that a legislative classification will be upheld against constitutional attack if it bears some reasonable relationship to the legitimate purposes of the legislation. Pegasus of Omaha, Inc. v. State, 203 Neb. 755, 280 N.W.2d 64 (1979). Likewise, the Supreme Court has stated, "Whether there was a reasonable basis for the enactment of the statute in question is primarily a matter of legislative determination, subject to limited judicial scrutiny." Bridgeford v. U-Haul Company, 195 Neb. 308, 238 N.W.2d 443 (1976). The determination of what is a reasonable basis for classification is thus first a matter for determination of the Legislature.

We do not have sufficient facts before us concerning the basis for this classification nor the purpose of this legislation to make such a determination. At best, we can only say that the Legislature may make reasonable classification of persons, corporations and property for purposes of legislation concerning them, but that these classifications must rest upon real differences of situations and circumstances surrounding the members of that class relative to the subject of the legislation which renders its enactment appropriate. Prendergast v. Nelson, 199 Neb. 97, 256 N.W.2d 657 (1977).

Your second question concerning LB 157 is as follows. You first note that LB 157 would require interest to be awarded even

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Senator William E. Barrett
June 4, 1985
Page -2-

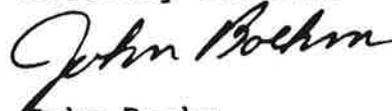
on claims for lost future earnings and pain and suffering. You then indicate that these are injuries which have not occurred at the time of trial and then ask whether LB 157 violates Article VII, Section 5, and Article I, Section 3, of the Nebraska Constitution by providing punitive damages which are in excess of the damages necessary to compensate injured parties for their losses.

Article VII, Section 5, of the Constitution merely provides that all fines and penalties levied in the State of Nebraska are to be appropriated to the support of the schools. Article I, Section 3, of the Constitution is the provision providing that no person shall be deprived of life, liberty or property without due process of law. Reliance upon these provisions has led to a rule of law in this state which provides that punitive, vindictive, or exemplary damages are not allowed in civil cases. Abel v. Conover, 170 Neb. 926, 104 N.W.2d 684 (1960). Your concern then is that the prejudgment interest would constitute a penalty or punitive award rather than compensation since the future losses have not yet occurred and the interest could not be construed as an award of compensatory damages.

If this argument were to be valid at all, it would seem that it must first apply to the underlying award for the damages for future losses and pain and suffering. The allowance of interest is compensation for the withholding or use of money otherwise due. Bell v. Arndt, 24 Neb. 261 (1888). It is thus not part of the award for the damages themselves. See also, 22 Am.Jur.2d, Damages, 179. If a court determines that a claim for future losses and pain and suffering is proper, and should have been allowed, then it only follows that interest may be permitted on such an otherwise proper claim. The rationale for granting interest in such circumstances is that the claim itself should have been paid when made, not that all of the damages have necessarily accrued. See, Hare, Jr., Prejudgment Interest in Personal Injury Litigation: A Policy of Fairness. 5 Am. Jur., Trial Ad. 81, Summer 1981. In summation then, we find no basis for concluding that such interest would constitute a penalty or punitive damages, and thus no basis for finding that such legislation is unconstitutional.

Sincerely,

ROBERT M. SPIRE
Attorney General



John Boehm
Assistant Attorney General

JB:ejg

cc Patrick J. O'Donnell
Clerk of the Legislature