

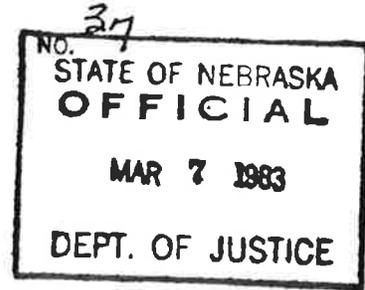
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

March 4, 1983

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Senator Karen Kilgarin  
Nebraska State Legislature  
1016 State Capitol  
Lincoln, Nebraska 68509

Dear Senator Kilgarin:

You have submitted to us a copy of LB 89, and asked us for our opinion as to the constitutionality of the provision that the speaker of the Legislature and the chairmen of the Legislature's Appropriation and Revenue Committees should be members of the State Tax Board, which would be created by that bill, and which would take the place of the State Board of Equalization and Assessment in setting sales and income tax rates.

The bill has been indefinitely postponed, but you inform us that you need the opinion, because its provisions may be used as an amendment to another bill.

The State Tax Board, under the bill, would be composed of the three designated members of the Legislature, plus the Governor and the Tax Commissioner. The board would set the tax rates under the same standards now specified for the State Board of Equalization and Assessment by Neb.Rev.Stat. §77-2715.01 (Supp. 1982).

Two provisions of the Nebraska Constitution must be considered. The first is Article II, Section 1, which provides:

The powers of the government of this state are divided into three distinct departments, the Legislative, Executive and Judicial, and no person or collection of persons being one of these departments, shall exercise any power properly

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or duties not properly belonging to those  
departments respectively.

Under the same reasoning, we believe the Legislature  
cannot delegate to members of the legislative branch duties  
which are administrative in nature. We therefore conclude that  
it would be difficult to defend the provisions you inquire  
about.

Very truly yours,

PAUL L. DOUGLAS  
Attorney General



Ralph H. Gillan  
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RHG:cw

Enc.

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