

DEPARTMENT OF JUSTICE

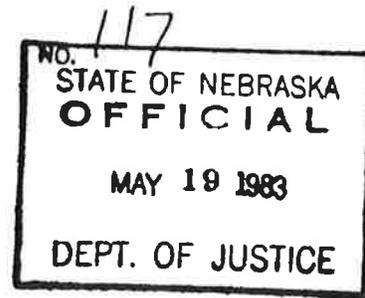
STATE OF NEBRASKA

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

May 19, 1983

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Senator Peter Hoagland
Nebraska State Legislature
1101 State Capitol
Lincoln, Nebraska 68509



Dear Senator Hoagland:

You have submitted to us another amendment to LB 599, and have asked our opinion as to whether it cures the problems we pointed out in our Opinion No. 103, and its predecessor, Opinion No. 88. In our opinion, it does not materially change the bill, as amended, which we discussed in our Opinion No. 103.

In Opinion No. 103 we discussed an amendment which provided that any injunction issued under the act could enjoin only offers to or purchases from Nebraska residents pursuant to a takeover offer. The amendments you now submit would provide that the liabilities, penalties, and remedies provided for by §§8-1117 and 8-1118 should apply only in respect to offers to or purchases from residents of the State of Nebraska. It further provides that the Department of Banking and Finance shall have, with respect to takeover offers, the powers set forth in §§8-1115 and 8-1116 only with respect to transactions in the State of Nebraska.

Sections 8-1117 and 8-1118 provide for certain liabilities and penalties for violation of the Securities Act of Nebraska, and provide remedies for persons injured by such violation. Sections 8-1115 and 8-1116 give the Director of Banking and Finance certain investigatory powers, and the right to bring an action for injunction to prevent violation of the Securities Act of Nebraska.

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In our Opinion No. 103 we pointed out the possibility that LB 599, as then amended, might still be held to violate the Commerce Clause of the Federal Constitution, and we also pointed out the distinct possibility that the courts may ultimately say that Congress has completely occupied the field with respect to takeover offers, leaving no room for state regulation.

As we said in that opinion, the answer is not crystal clear, but there is a strong likelihood that this legislation will be held to be invalid, either as being in violation of the Commerce Clause, or as having been preempted by the Williams Act. The amendment you have submitted to us does nothing to change that conclusion.

Very truly yours,

PAUL L. DOUGLAS
Attorney General



Ralph H. Gillan
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RHG:cw

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