

DEPARTMENT OF JUSTICE

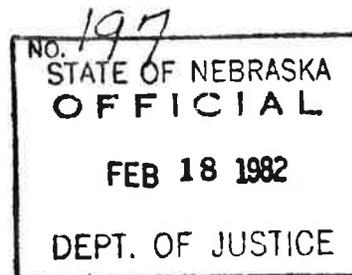
STATE OF NEBRASKA

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

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February 17, 1982

Senator Gerald D. Koch
Room 1519
State Capitol
Lincoln, Nebraska 68509



Dear Senator Koch:

You have requested a legal opinion with respect to LB 578 which you have introduced in the current Legislative session. LB 578 would allow Nebraska residents over 60 years old to enroll in classes at state supported post-secondary institutions without paying tuition under certain conditions.

The question which you have posed is, "Does the use of the age sixty establish a classification or privilege which could not meet a constitutional test based on equal opportunity and treatment?"

We do not see any legal or constitutional barriers based on age to your legislation. The Nebraska Act Prohibiting Unjust Discrimination in Employment Because of Act, Neb.Rev. Stat. §48-1001 to §48-1009 (Reissue 1978, Cum. Supp. 1980), is not applicable. That statute forbids discrimination in employment based on age; the protected class is composed of individuals between the ages of 40 and 70.

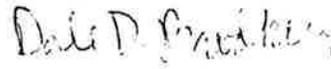
Furthermore, LB 578 would not violate constitutional equal protection requirements. "The standard by which a court reviews a classification established by [economic or social welfare] legislation is whether it has a rational basis and is

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at least arguably related to a legitimate function of govern-
not prohibited by the Constitution." Grosvenor v. Grosvenor,
206 Neb. 395, 293 N.W.2d 96 (1980). Because age is not a
suspect classification for constitutional purposes, LB 578
would fall within the standard set out in Grosvenor.

Very truly yours,

PAUL L. DOUGLAS
Attorney General



Dale D. Brodkey
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DDB:ekj

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