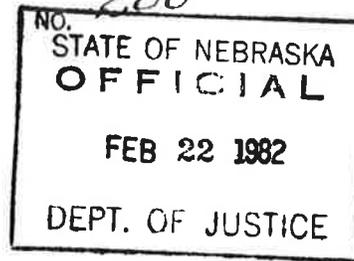


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

February 19, 1982



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Senator Samuel K. Cullan
Member of the Legislature
Room 807, State Capitol
Lincoln, Nebraska 68509

Dear Senator Cullan:

This letter is supplementary to our letter of February 11, 1982, concerning a proposed amendment to LB 684 which imposes a residency requirement of one year as a condition of eligibility for receipt of AFDC benefits for the unborn. As we indicated to you in our letter of February 11, 1982, such a residency requirement would be declared unconstitutional. We still maintain this position, under the Shapiro analysis. Although unconstitutional for the above reason, the amendment would not be defective as violative of the supremacy clause. This is due to a recent amendment to the Social Security Act which specifically provides the states with an optional plan for aid to unborn children. See, Title XIII, Public Assistance Programs, Subtitle A, Chapter 1, §2312(a) (amending §406(b) of the Social Security Act) 1981. We construe this to be a clear congressional authorization for a state to exclude unborn children from AFDC entitlements. Consequently, a state's legislative attempt to exclude unborn children from this program would no longer clash with federal law. Again, the proposed amendment to LB 684 would be constitutionally defective under the United States Supreme Court decision in Shapiro v. Thompson, 394 U.S. 618 (1969).

Very truly yours,

PAUL L. DOUGLAS
Attorney General


Royce N. Harper
Assistant Attorney General

RNH:pjs

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

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