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NO.
STATE OF NEBRASKA
OFFICIAL
DEC 30 1996
DEPT. OF JUSTICE

DATE: December 30, 1996

SUBJECT: Same-sex Marriage - Impact of ***Baehr v. Lewin*** and the Defense of Marriage Act on Nebraska Law

REQUESTED BY: Senator Jim Jensen

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

You have requested an Attorney General's Opinion concerning the impact of the recent court decision in Hawaii regarding same-sex marriage, as well as the new federal Defense of Marriage Act, on possible legislation in Nebraska to prohibit same-sex marriages.[1]

In Op. Att'y Gen. No. 96025 (March 25, 1996), we addressed the issue of whether Nebraska would be required to recognize a same-sex marriage license obtained in the State of Hawaii. At that time, a lawsuit concerning same-sex marriage was still pending before a trial level court in Hawaii following remand by the Hawaii Supreme Court. ***See Baehr v. Lewin***, 852 P.2d 44 (Hawaii 1993). On December 3, 1996, the trial court ruled that Hawaii could not refuse to grant licenses for same-sex marriages, thus creating the possibility that other states, including Nebraska, would have to

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[1]The use of the phrase "same-sex 'marriage'" in this opinion is in no way intended to indicate that two persons of the same sex are capable of entering into a marriage relationship. See Op. Att'y Gen. No. 96025 (March 25, 1996) ("Marriage" can only occur between persons of the opposite sex); 1977-78 Rep. Att'y Gen. 170. (Op. No. 113, June 27, 1977).

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1. New legislation expressly prohibiting or excluding recognition of same-sex marriages under Nebraska law is the only certain way to avoid the possibility that Nebraska could be forced to recognize same-sex marriage licenses issued in Hawaii.

2. The Defense of Marriage Act protects any State, including Nebraska, from being forced to recognize same-sex marriages from other jurisdictions if such State does not wish to do so. However, DOMA does not alter existing State laws nor prohibit States from recognizing same-sex marriages. Given the existing uncertainty under Nebraska law, additional legislation would be required to ensure Nebraska would be protected under DOMA.

Sincerely yours,

DON STENBERG
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Approved By:

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3-2687-3