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#99014

NO.
STATE OF NEBRASKA
OFFICIAL
APR 8 1999
DEPT. OF JUSTICE

DATE: April 5, 1999

SUBJECT: Constitutionality of LB 523; Whether Adoption of the Nurse Licensure Compact Would Constitute an Improper Delegation of Legislative Authority

REQUESTED BY: Deborah S. Suttle, Senator
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Lynn A. Melson, Assistant Attorney General

You have requested the opinion of this office regarding the constitutionality of proposed legislation to adopt the Nurse Licensure Compact. It is our understanding that your concern is whether LB 523 would constitute an unconstitutional delegation of legislative authority. You have enclosed with your opinion request a copy of Kansas Attorney General Opinion No. 99-3 which discusses that issue and concludes that enactment of the compact in Kansas would be unconstitutional.

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The purpose of LB 523 is to adopt the Nurse Licensure Compact. LB 523 provides that registered nurses, licensed practical nurses and vocational nurses residing in each "party state," meaning any state that has adopted the compact, will enjoy a multistate licensure privilege and be authorized to practice as a nurse in all party states. LB 523, § 1, art. III(a). In order to obtain or retain a license as a nurse, each applicant must meet his or her home state's qualifications for licensure and license renewal. Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. State practice laws are defined as "those individual party states' laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline." LB 523, § 1, art. II(n). LB 523 also provides for a coordinated licensure information system and the sharing of certain investigative information. LB 523, § 1, art. VII and VIII.

We agree with the Kansas Attorney General that adoption of the Nurse Licensure Compact would grant the legislatures of other states "the unqualified right to determine the qualifications for the practice of nursing in this state by nonresidents." In Nebraska, the Legislature may not delegate its legislative authority, power, or functions to an administrative or executive authority or to private individuals. ***Bosselman, Inc. v. State***, 230 Neb. 471, 432 N.W.2d 226 (1988); Neb. Const. art. III, § 1. "The Legislature does have power to authorize an administrative or executive department to make rules and regulations to carry out an expressed legislative purpose, or for the complete operation and enforcement of a law within designated limitations. . . . The limitations of the power granted and the standards by which the granted powers are to be administered must, however, be clearly and definitely stated in the authorizing act." ***Bosselman***, 230 Neb. 471 at 476, (citing ***Lincoln Dairy Co. v. Finigan***, 170 Neb. 777, 780-81 (1960)). However, with regard to LB 523, adoption of the Nurse Licensure Compact would result not merely in the delegation of the authority to administer the law, but delegation to other states of the authority to enact the law and to set the standards themselves.

The Legislature may lawfully adopt by reference an existing law or regulation of another jurisdiction, including the United States." ***Clemens v. Harvey***, 247 Neb. 77, 81, 525 N.W.2d 185, 188 (1994) (citing ***Anderson v. Tiemann***, 182 Neb. 393, 155 N.W.2d 322 (1967)). The Legislature, however, may not adopt from another jurisdiction statutes or regulations which are not yet in existence at the time of adoption or which are subject to amendment. Such a provision would likely be construed to be an unconstitutional delegation of power by the Legislature to the other jurisdiction. LB 523 does not attempt to incorporate into Nebraska law a specific statute of another jurisdiction as it exists at the time of passage of LB 523. Rather, it purports to allow the legislatures of other unidentified

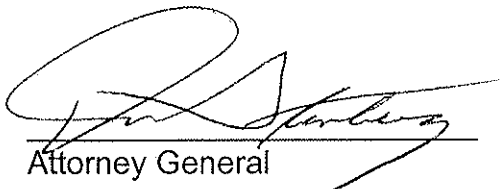
jurisdictions to establish, now and in the future, the qualifications for the licensure of certain nurses practicing in the State of Nebraska. In our view, this would constitute an impermissible delegation of the legislative power.

Sincerely,

DON STENBERG
Attorney General

Lynn A. Melson
Assistant Attorney General

Approved:



Attorney General

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

09-206-16