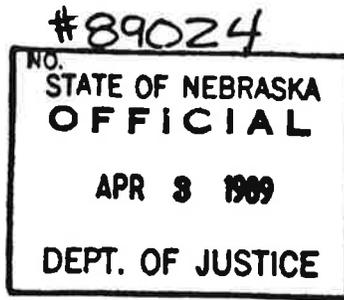


Linda Willard

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: March 24, 1989

SUBJECT: Constitutional law. Statutory construction; doctrine of "void for vagueness" and doctrine of unconstitutional delegation of legislative power.

REQUESTED BY: Senator Howard Lamb  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
Harold Mosher, Assistant Attorney General

You have inquired if section 1(4) of LB 183 of the Ninety-first Legislature, First Session (1989), is constitutionally vague and whether section 6 of LB 183, as amended, is an unconstitutional delegation of legislative power. Each is hereinafter discussed.

Section 1(4) of LB 183, as amended, would permit a child's parent or guardian to decide what public school or public school district is best for the child based upon several factors, including "The quantity and quality of the staff at such school and school districts." Based on the provision quoted, you have inquired if it would be a legitimate purpose for a student to attend a public school in a school district other than the school district of his or her residence or ward based upon an athletic coach's reputation and the record or performance of the teams coached? •

L. Jay Bartel  
Elaine A. Catlin  
Delores N. Coe-Barbee  
Dale A. Comer  
David Edward Cygan  
Lynne R. Fritz

Denise E. Frost  
Yvonne E. Gates  
Royce N. Harper  
William L. Howland  
Marilyn B. Hutchinson  
Donald E. Hyde

Kimberly A. Klein  
Charles E. Lowe  
Lisa D. Martin-Price  
Steven J. Moeller  
Harold I. Mosher  
Fredrick F. Neid

Bernard L. Packett  
Marie C. Pawol  
Kenneth W. Payne  
Douglas J. Petersen  
LeRoy W. Sievers  
James H. Spears

Mark D. Starr  
John R. Thompson  
Susan M. Ugar  
Terri M. Weeks  
Melanie J. Whittamore  
Linda L. Willard

Senator Howard Lamb

March 24, 1989

Page -2-

Although most decisions involving the constitutional "void for vagueness" doctrine have dealt with statutes and ordinances involving criminal sanctions, the doctrine applies equally to civil statutes. In the Interest of D. L. H., 198 Neb. 444, 253 N.W.2d 283 (1977). The accepted test for determining whether a statute is vague is whether it forbids or requires doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application. State ex rel. Douglas v. Herrington, 206 Neb. 516, 294 N.W.2d 330 (1980). Applying the above test to section 1(4) of LB 183, it is clear that a person of ordinary intelligence could not be expected to know the meaning of the words "quantity and quality of the staff" as those words are used therein. For example, does the words "quantity . . . of the staff" mean two coaches? Or perhaps three or more coaches? Likewise, does the words "quality of the staff" mean the won-loss record of the head coach or the won-loss record of all the coaches or does it have some other meaning? The words "quantity and quality of the staff" in section 1(4) of LB 183, as amended, can obviously mean many things and men of common intelligence must necessarily guess as to their meaning and will, of course, differ as to their application. Consequently, we are of the opinion that section 1(4) of LB 183 is void for vagueness.

Section 6 of LB 183, as amended, would require the school board or board of education of option school districts to adopt by resolution specific standards for acceptance and rejection of students who desire to attend a certain option school district but who are not residents thereof. You have inquired if this requirement is an unconstitutional delegation of legislative power?

We think not. The general doctrine of prohibiting the delegation of legislative authority has no application to the vesting in political subdivisions the power to govern matters which are local in scope. See Peterson v. Cook, 175 Neb. 296, 121 N.W.2d 399 (1963).

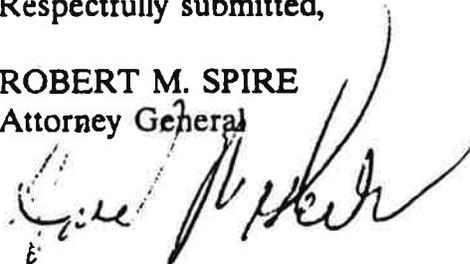
Senator Howard Lamb  
March 24, 1989  
Page -3-

Conclusion

We are of the opinion that section 1(4) of LB 183, as amended, is void for vagueness and section 6 of LB 183, as amended, is not an unconstitutional delegation of legislative power. Your first question stated herein is therefore answered "yes" and your second question stated herein is therefore answered "no."

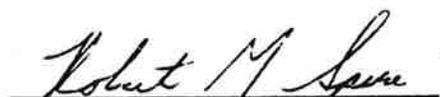
Respectfully submitted,

ROBERT M. SPIRE  
Attorney General



Harold Mosher  
Assistant Attorney General

Approved:

  
Attorney General

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

20-627-8