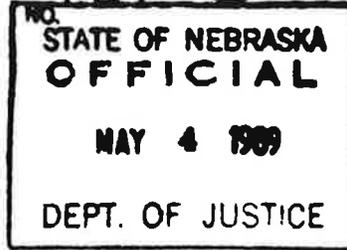


DEPARTMENT OF JUSTICE

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

#89043



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

DATE: May 4, 1989
SUBJECT: Deficit appropriation bill
REQUESTED BY: Senator Ron Withem
Nebraska State Legislature
WRITTEN BY: Robert M. Spire, Attorney General
Harold Mosher, Assistant Attorney General

In your letter of inquiry you state that section 11 of LB 812 proposes to revise an appropriation of \$750,000, made by the Legislature in 1988 as an overmatch to the State Student Incentive Grant Program, #299. You also state in your letter of inquiry that this money has already been distributed to institutions by the Coordinating Commission and further, the program to which funds would be appropriated does not yet exist. You then ask several constitutional questions.

LB 1041 of the Ninetieth Legislature, Second Session (1988) appropriated \$750,000 from the General Fund for FY 88-89 to the Coordinating Commission for Postsecondary Education for Program 299 (SSIG). Section 11 of LB 812 of the Ninety-first Legislature, First Session (1989) states, in part, "There is hereby appropriated \$750,000 from the General Fund for the period July 1, 1988, to June 30, 1989, to the Nebraska Coordinating Commission for Postsecondary Education, for Program ~~299~~ 298 - Scholarship Assistance Program, for state student grants-in-aid, which shall only be used for such purpose. * * *. It is intended that all funds in Programs 298 and 299 be allocated based on the distribution of federal need-based grants."

Obviously, the current budget program is 299 whereas 298 does not yet exist. In connection therewith, a distinction must be drawn between a budget program (an accounting convention) and a "program" required to be created in substantive law, i.e., a program in a functional sense "that delineates a role, purpose, or scope of activity." With this distinction in mind, it appears to us that section 11 of LB 812 does create a new statutory program

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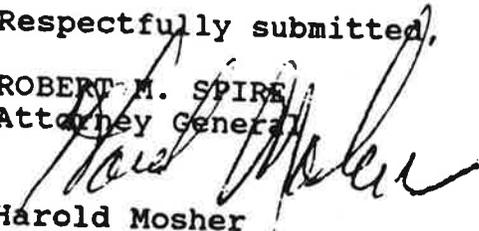
Senator Ron Withem
May 4, 1989
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of service. In other words, LB 812 changes the current language on the purpose, amount and, expenditure of the currently-appropriated funds, and directs they be accounted for in two separate programs. That, in our opinion, does raise constitutional questions. Accordingly, we see constitutional problems with section 11 of LB 812.

Section 11 does not add new money to a current program of service, to wit program 299, section 45 of LB 1041. Section 11 of LB 812 changes current program obligations, and creates program 298 Scholarship assistance program for budget purposes prior to passage of LB 468 first session 91 Legislature.

Respectfully submitted,

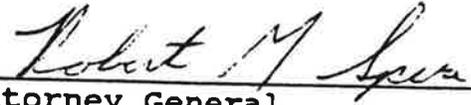
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20-65-2

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

APPROVED BY:



Attorney General