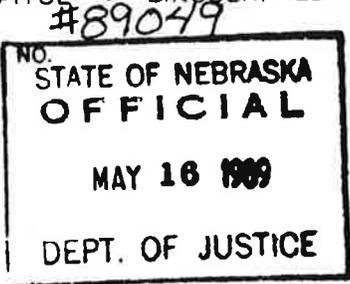


Linda Willard

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: May 11, 1989

SUBJECT: Constitutionality of an Appropriation for "Facility Maintenance and Planning Activities" Related to a Building which is not owned by the State of Nebraska

REQUESTED BY: Senator Rex Haberman  
Nebraska Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
Dale A. Comer, Assistant Attorney General

You have requested our opinion as to the "constitutionality of an appropriation for 'facility maintenance' and planning activities' related to a building that is owned by an entity other than the State of Nebraska." From the context of your opinion request, together with the other materials which you provided to us, it appears that you are concerned that the appropriation in question violates Article XIII, Section 3 of our state constitution which provides that the credit of the state shall not be given in aid of any private individual, association or corporation. As discussed below, we have concluded that the appropriation in question does not violate that provision of our state constitution.

LB 164 initially was drafted to establish a state Task Force on Historic Preservation to survey and review historic preservation projects and activities in Nebraska. As a result of an amendment by the Government Military and Veterans Affairs Committee, the original bill was gutted, and LB 164 became a proposed amendment to Neb.Rev.Stat. §81-815.21 providing that it is the intent of the Legislature that Joslyn Castle and its grounds should be preserved as a historical structure and as a part of the state park system. Coincidental to this change in LB 164, LB 813, the main appropriations bill, provides that the State Visitors Promotion Cash Fund shall receive \$50,000 for fiscal year 1989-90 "for facility maintenance and planning activities related to the Joslyn Castle." Portions of the floor debate on this appropriation in LB 813 which you provided to us indicate that the \$50,000 is to be used for a study to determine how best to utilize the Joslyn Castle, and for payment of utility costs and security costs for the building.

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Joslyn Castle in Omaha is owned by the Omaha Public Schools, and is not a state property. As a result, you are concerned about the constitutionality of appropriating state monies for maintenance of a building which is not owned by the state. That concern prompted your opinion request to us.

Article XIII, Section 3 of our Nebraska Constitution provides, in pertinent part, "the credit of the state shall never be given or loaned in aid of any individual, association or corporation . . ." Our Supreme Court has indicated that the purpose of this section is to prevent the state from extending its credit to private enterprise. Lenstrom v. Thone, 209 Neb. 783, 311 N.W.2d 884 (1981). In essence, public monies may not be used for private purposes. State ex rel Beck v. City of York, 164 Neb. 223, 82 N.W.2d 269 (1957). However, no hard and fast rule can be established for determining whether a proposed expenditure of public funds is devoted to a public use or purpose, and each case must be decided with reference to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare. United Community Services v. The Omaha National Bank, 162 Neb. 786, 77 N.W.2d 576 (1956). It is for the Legislature to decide in the first instance what is and what is not a public purpose, and, to justify a court in declaring a particular action invalid, the absence of a public purpose must be so clear and palpable as to be immediately perceptible to the reasonable mind. Chase v. County of Douglas, 195 Neb. 838, 241 N.W.2d 334 (1976). The vital point in all such determinations is whether the purpose is public, and if it is, it does not matter whether the agency through which the funds are dispensed is public or not; the appropriation is not made for the agency, but for the object which it serves. Id. The test in each case for whether there is a public purpose in a given appropriation is in the end, not in the means. Id.

In the present instance, we cannot say that there is clearly no public purpose involved in the appropriation of funds for the maintenance of Joslyn Castle. As noted above, the money here is apparently going to a state agency for a study of the uses for Joslyn Castle, and for interim preservation of the facility itself. There apparently is no appropriation for maintenance other than for payment of utilities and security costs, and it does not appear that this appropriation constitutes an outright payment to a private entity. It also seems to us that it could be said that preservation of our architectural heritage and preparation of a new state park for all Nebraskans do constitute public purposes. As a result, we believe that it could be argued that there is a proper

Senator Rex Haberman

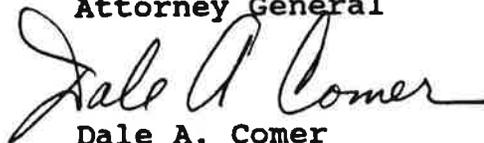
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public purpose underlying the appropriation for preservation of Joslyn Castle, and we do not believe that such an appropriation violates Article XIII, Section 3 of our state constitution.

Sincerely yours,

ROBERT M. SPIRE  
Attorney General



Dale A. Comer  
Assistant Attorney General

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

APPROVED:

  
Attorney General

5-72-13