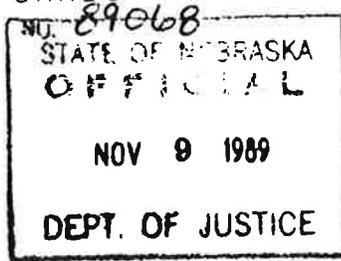


Linda Willard

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: November 9, 1989

SUBJECT: Constitutionality of Legislation Exempting Railroad Operating Property From Personal Property Tax

REQUESTED BY: Senator James D. McFarland  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to a draft copy of a bill you indicate "apparently" will be introduced in the Special Session to begin November 8, 1989, which would amend Neb.Rev.Stat. §77-202 (Cum.Supp. 1988) to include a subsection providing that ". . . [a]ll operating property of any railroad company or railroad car company shall be exempt from the personal property tax." Your question concerns whether the adoption of legislation of this nature would, in your words, ". . . violate the Uniformity of Taxation Clause of the Nebraska Constitution (Article VIII, Section 1) or the Equal Protection Clause of the 14th Amendment to the United States Constitution, or any other state or federal constitutional provision."

In Attorney General Opinion No. 89065, November 2, 1989, we addressed at length a similar question as to the constitutionality of the establishment of a legislative classification exempting from personal property tax "rolling stock owned or leased by railroads and used in railroad transportation." In general, the matters addressed in this opinion relate directly to your request to the extent that your proposed legislation seeks to deal with the constitutionality (under Article VIII, Sections 1 and 2 of the Nebraska Constitution, or the Equal Protection Clause of the United States Constitution) of the separate classification and taxation of rail transportation personal property pursuant to Nebraska law. In essence, the difference between your request and our prior opinion focuses on whether an exemption for "all operating property of any railroad or railroad car company," as opposed to an exemption for "railroad rolling stock," raises any constitutional issues in addition to those addressed in our prior opinion.

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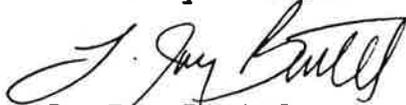
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Senator James D. McFarland  
November 9, 1989  
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Apart from concerns as to the manner in which the draft bill is worded, the primary difficulty which arises in regard to your proposed bill is the question of whether such legislation could survive scrutiny under either the state constitutional prohibition against unreasonable or arbitrary classification (Neb. Const., Art. III, §18), or the protection against classifications which do not satisfy the rational basis criteria under the Equal Protection Clause of the 14th Amendment to the United States Constitution. If the Legislature were to enact legislation exempting "all operating property of any railroad company or railroad car company" from personal property tax, the general nature of such language would result in the exemption of various types of personal property of railroads which, if owned by other individuals or entities, would remain within the class of taxable tangible property. We believe a serious question exists as to whether such an approach would satisfy constitutional requirements regarding the reasonableness and rationality of such classification. In any event, it appears that the draft bill you propose is outside the scope of the subjects presently contained in the Proclamation, and, accordingly, would not constitute valid legislative business to be acted upon during the current special session.

Very truly yours,

ROBERT M. SPIRE  
Attorney General

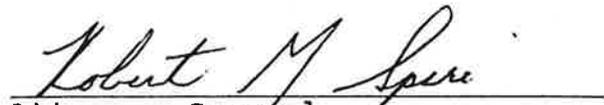


L. Jay Bartel  
Assistant Attorney General

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

APPROVED BY:

  
\_\_\_\_\_  
Attorney General