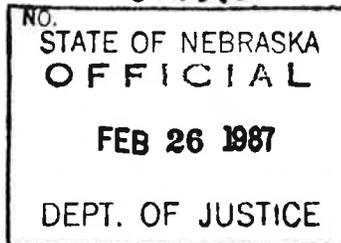


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

87026



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

DATE: February 26, 1987

SUBJECT: Life Insurance Policy and Annuity Benefits Exempt from Legal Process

REQUESTED BY: Senator R. Wiley Remmers, Chairman
Banking, Commerce & Insurance Committee

WRITTEN BY: Robert M. Spire, Attorney General; Fredrick F. Neid, Assistant Attorney General

You have requested an opinion of this office concerning proposed legislation which provides for exemption of certain life insurance policy and annuity benefits from attachment, garnishment, or other process of law. Generally, LB 335 would serve to amend Neb.Rev.Stat. §§44-371 (Reissue 1984) and 44-1089 (Supp. 1986) to increase the exemption from \$5,000.00 to \$7,500.00 for these types of benefits from attachment, garnishment, or other legal process.

The first question is whether the legislation is constitutional in its application to the proceeds, value, or benefits of an annuity contract which accrue prior to the effective date of the legislation. It is our opinion that the proposed legislation is constitutional in its application to proceeds, cash value, or benefits which may accrue prior to the effective date of the legislation.

It appears that the amendment provided by LB 335 is intended to harmonize state law with exemptions permitted by other federal laws in the context of the Federal Bankruptcy Code. In Nebraska, a debtor is permitted the exemptions available under state law and those available under other federal law. This is a constitutionally permissible change and would serve to eliminate a dollar amount difference between exemptions available under other federal and state law.

Your second question concerns the effect of the legislation on the proceeds, cash value, or benefits of an annuity contract prior to or after the effective date of the proposed legislation. Upon passage of the bill into law (effective date), \$7,500.00 of

L. Jay Bartel
Martel J. Bundy
Janie C. Castaneda
Dale A. Comer
Laura L. Freppel

Lynne R. Fritz
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Jill Gradwohl
Royce N. Harper
William L. Howland

Marilyn B. Hutchinson
Mel Kammerlohr
Sharon M. Lindgren
Charles E. Lowe
Steven J. Moeller

Harold I. Mosher
Fredrick F. Neid
Bernard L. Packett
Lisa D. Martin-Price
LeRoy W. Sievers

James H. Spears
Mark D. Starr
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Susan M. Ugai
Linda L. Willard

Senator R. Wiley Remmers
February 26, 1987
Page -2-

the cumulative value of benefits of an annuity contract would be exempt from attachment, garnishment, or other legal process regardless of whether the value accrued prior to or after the effective date.

The "two-year provision" of the bill addresses cash values accruing to matured or unmatured life insurance and annuity contracts in the context of the Federal Bankruptcy Code only. This provision is intended to preclude exemption of cash values accruing during the preceding two years for bankruptcy purposes. It is our opinion that, after passage of the bill into law, the two years would be measured from the date of a filing in bankruptcy by the debtor.

Very truly yours,

ROBERT M. SPIRE
Attorney General

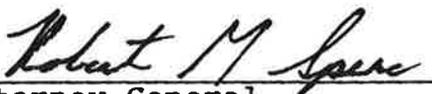


Fredrick F. Neid
Assistant Attorney General

FFN:bmh

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

APPROVED BY:


Attorney General