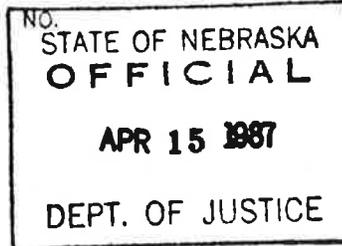


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

87050



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

DATE: April 15, 1987

SUBJECT: Constitutionality of LB 184, a Bill Which Provides That State Statutes Requiring the Expenditure of State Funds Be Subject to Appropriation.

REQUESTED BY: Senator Jerome Warner
Nebraska State Legislature

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

LB 184 provides, in its entirety: "Notwithstanding any other provision of law, any provision of law which requires, provides for, or necessitates the expenditure of state funds to enable its implementation shall be subject to appropriations by the Legislature." Certain proposed amendments to LB 184 would add the following language at the end of the bill, "except that this section shall not apply unless the appropriations bill identifies the program, service, or law for which, pursuant to this section, appropriations are not being made." You have requested our opinion as to the constitutionality of LB 184 along with the proposed amendments. Specifically, you ask whether LB 184 provides for an unconstitutional amendment or repeal of a substantive law by an appropriations bill, and you further inquire as to whether LB 184 violates Art. III, Section 14 of our state Constitution dealing with procedures for the amendment of statutes. We conclude that the provisions of LB 184 and its proposed amendments are constitutional.

The questions which you have raised concerning the constitutionality of LB 184 turn upon a determination as to whether the bill and its amendments constitute a "repeal" or an "amendment" of existing statutes. We conclude that they are neither. Rather, they appear to act in a manner more closely akin to a suspension of the existing laws. As such, they would not run afoul of the constitutional provisions you have referenced.

LB 184 and its proposed amendments do not specifically repeal any portions of the Nebraska statutes. Consequently, if that legislation effects a repeal of existing statutes, it must be by implication in the sense that a statute might become inoperative under LB 184 due to a lack of appropriations. Under Nebraska law, such a repeal by implication is not favored. State

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v. Roth, 222 Neb. 119, 382 N.W.2d 348 (1986); Little Blue Natural Resources District v. Lower Platte North Natural Resources District, 206 Neb. 535, 294 N.W.2d 598 (1980). As a result, our courts will attempt to avoid a construction of LB 184 which would result in the repeal of other statutes.

Repeal generally means "to revoke", "to rescind", or "abrogate by authority." Golconda Lead Mines v. Neill, 82 Idaho 96, 350 P.2d 221 (1960). Moreover, there is a material difference between the repeal of a statute and the suspension of that statute. A repeal puts an end to the statute in question, a suspension holds it in abeyance. 82 CJS Statutes, §278.

It appears to us that LB 184 together with its proposed amendments would not revoke, rescind or put an end to any substantive statutes. Instead, by providing that statutes will not be implemented without an appropriation, the bill would simply hold implementation of a statute in abeyance. Therefore, LB 184 would result in a suspension of statutes rather than a repeal. Since, in our view, LB 184 and its proposed amendments would not result in the repeal of statutes, we do not believe that the bill provides for an unconstitutional repeal of a substantive law by an appropriations measure.

Your second question concerning the constitutionality of LB 184 and its proposed amendments involves Art. III, Section 14 of our state Constitution. That portion of our Constitution provides, in pertinent part, "And no law shall be amended unless the new act contain the section or sections as amended and the section or sections so amended shall be repealed." You ask whether LB 184 and its amendments could be construed as improperly amending other statutes by implication since it would condition the implementation of other statutes upon appropriations, and since it does not enumerate any statutes so "amended."

Our Supreme Court has consistently maintained that when an act is complete and independent in itself, it may incidentally amend, modify, or have some impact upon the provisions of existing statutes without violating the provisions of our Constitution concerning amendments as set out in Art. III, Section 14. State ex rel. Douglas v. Gradwohl, 194 Neb. 745, 235 N.W.2d 854 (1975); Blackledge v. Richards, 194 Neb. 188, 231 N.W.2d 319 (1975). Furthermore, our constitutional provisions relating to amendments will receive a reasonable and liberal construction with the view of upholding the acts of the Legislature, and not unnecessarily hampering the Legislature in its work. State ex rel. Kaspar v. Lehmkuhl, 127 Neb. 812, 257 N.W. 229 (1934). In determining whether an act is complete and independent in itself, our courts will consider whether the

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legislation in question is meaningless standing alone, and whether it makes changes in existing law by adding new provisions and mingling the new with the old on the same subject in such a manner as to confuse the interpretation and application of the whole legislation. State ex rel. Douglas v. Gradwohl, supra.

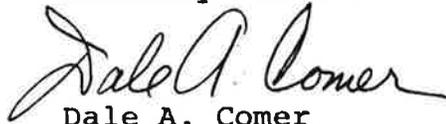
Under the criteria set out above, we believe that LB 184 together with its proposed amendments could be considered as complete and independent in itself since it is intelligible without reference to other legislation, and since it does not add new provisions to existing statutes or mingle new and old provisions on the same subject. If LB 184 is considered as complete in itself, it is not an amendment to other statutes, and it would not fall within the provisions of Art. III, Section 14 of the Nebraska Constitution.

Apart from the question of the independence of LB 184, we would note that an amendment to a statute is generally considered a change or an alteration of the law or of some of its provisions which continues the statute in a changed form. State ex rel. Strutz v. Baker, 71 N.D. 153, 299 N.W. 574 (1941). We do not believe that LB 184 involves a change or alteration of any of the substantive statutes upon which it might impact. Rather, as we stated earlier, we believe that LB 184 would act as a suspension of those statutes.

In sum, it is our view that LB 184 together with its proposed amendments would result in a suspension of existing statutes rather than a repeal or an amendment of those statutes. Therefore, LB 184 would not bring about an unconstitutional amendment or repeal of a substantive law by an appropriations bill. Neither would it violate Art. III, Section 14 of our Nebraska Constitution which prohibits statutory amendments which fail to state and repeal the section or sections amended.

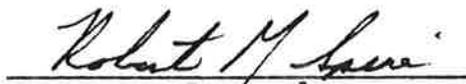
Sincerely,

ROBERT M. SPIRE
Attorney General



Dale A. Comer
Assistant Attorney General

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


Attorney General