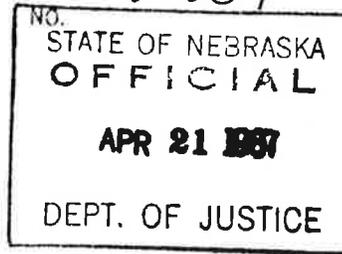


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

87059



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

DATE: April 20, 1987

SUBJECT: The case of Ewing et al. v. Scotts Bluff County Board of Equalization, et., Case No. 85-804, is awaiting argument before the Nebraska Supreme Court. If that court in the case cited were to find that so much of LB 930, Laws 1984, which authorizes receiving school districts to reduce the free high school tuition charge certified by the State Department of Education is unconstitutional and the remaining provisions of this legislative bill cannot stand without such authorization and if the Legislature fails to enact LB 182 or other corrective legislation, would the law existing prior to the enactment of LB 930, Laws 1984, be reinstated so that school districts could use the formula in LB 933, Laws 1982, to compute the free high school tuition?

REQUESTED BY: Senator Ron Withem
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Harold Mosher, Assistant Attorney General

The Nebraska Supreme Court has granted an expedited appeal in Ewing v. Scotts Bluff County Board Equalization, et al., supra. The case will be argued in May, 1987, and a decision in all probability will be announced by the Nebraska Supreme Court sometime this summer. Until it does so, however, there are several unknowns which make it impossible to fully answer your question.

At the outset, if the Nebraska Supreme Court were to find the reduced free high school tuition provision in Neb.Rev.Stat. §79-4,102(f) (Supp. 1986) is unconstitutional and the balance of LB 930, Laws 1984, cannot be severed therefrom it is certainly possible that the law existing prior thereto could be reinstated. The problem here is that the law existing prior thereto, LB 933, Laws 1982, has been found unconstitutional by the District Court of Lancaster County. A motion for a new trial has been filed in

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

Lynne R. Fritz
Yvonne E. Gates
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
John R. Thompson
Susan M. Ugal
Linda L. Willard

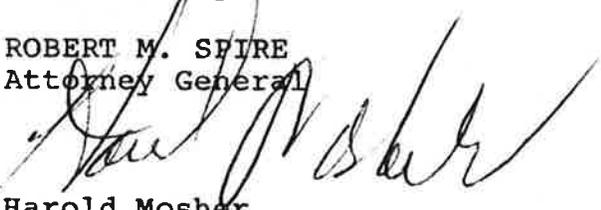
Senator Ron Withem
April 20, 1987
Page -2-

that case and is scheduled to be heard April 27, 1987. It is obviously unknown at this time whether or not the motion for a new trial will be granted and if not whether the case will be appealed to the Nebraska Supreme Court. If and when the case is appealed to the Nebraska Supreme Court is doubtful if it could be briefed and argued before sometime late in the fall of 1987.

It must also be kept in mind that the Nebraska Supreme Court could find the reduced free high school tuition authorized by LB 930, Laws 1984, to be constitutional and the reduced free high school tuition authorized by LB 933, Laws 1982, to be unconstitutional or vice-versa. It must also be kept in mind that the Nebraska Supreme Court could find that the plaintiffs in the Ewing case lack standing to maintain the action in which event the Nebraska Supreme Court in all probability would reverse the judgment of the District Court of Scotts Bluff County and order the case dismissed. In that event, LB 930, Laws 1984, would be operative law (assuming the Ninetieth Legislature, First Session, does not enact a free high school tuition law) but the question would remain if LB 930, Laws 1984, is constitutional. Thus there are simply too many unknowns at this time for us to give you an opinion in response to your question. We can tell you that we know of no case in which a court has found the free high tuition, as certified by the State Department of Education pursuant to LB 930, Laws 1984, to be noncompensatory. However, that statement must read with the caveat that the Nebraska Supreme Court could find LB 930, Laws 1984, is unconstitutional in which event the critical question would be whether or not the prior free high school tuition law is compensatory. That question, however, must wait until further facts become known.

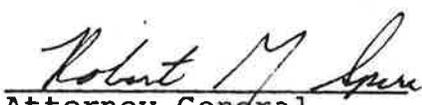
Respectfully submitted,

ROBERT M. SPIRE
Attorney General


Harold Mosher
Assistant Attorney General

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

APPROVED:


Attorney General