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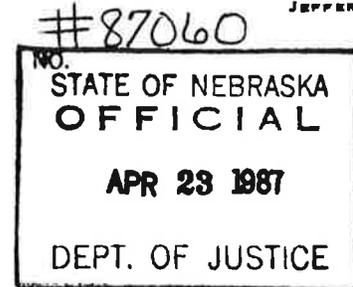
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DATE: April 21, 1987

SUBJECT: State highways; logo signs

REQUESTED BY: Senator Don Wesely  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General; Warren D.  
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You have submitted the three amendments to LB 741, Ninetieth Legislature First Session, inquiring as to the constitutionality of LB 741 with these amendments attached. The amendments are the Standing Committee Amendment Number AM0647, the E & R Amendment Number AM5179, and proposed Amendment Number AM0897, which amend the Standing Committee amendment. There is still some question, however, about the point raised in our Opinion No. 115, dated May 18, 1983, which has to do with use of the State right-of-way. The Standing Committee Amendment does provide, in addition to the actual cost of material, fabrication and erecting of specific information sign panels, of an annual fee, which according Amendment Number 897, is to cover fair market rental value. But in section (3), it provides that all revenue received shall be in the Highway Cash Fund and used only for construction and maintenance of the specific information sign panels and administration of these sections. It would appear to us that in order to meet the objections of Opinion No. 115, and avoid the prohibition against loaning the credit of the State, the annual fee (but not the cost of material, fabrication and erecting of the signs) should be placed in the Highway Cash Fund without restriction. If all the funds the Department receives have to be used on the logo program, it would appear arguable that the logo program, and thus the private advertisers are receiving free use of the highway right-of-way.

Also, we have a problem with E & R Amendment Number AM5179. The language of the Standing Committee Amendment was "...business sign and the actual cost of material, fabrication, and erecting the specific information sign

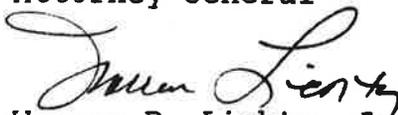
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panels...." The E & R Amendment Number 5179, changes this language to read: "...business sign and the actual cost of material for fabrication of and erecting the specific information sign panels...." In other words, the original amendment states a series, that is "material, fabrication, and erecting", while the E & R Amendment provides only for the cost of material. We therefore believe that while the actual expenditures are all covered in the Standing Committee Amendment, the E & R Amendment recreates some possible expenditures, that is fabricating and erecting costs, which would not be reimbursed and therefore, would provide for unconstitutional expenditures.

Finally, our Opinion No. 115 raises the question of granting of special or exclusive privileges. We are informed, however, that other states have been allowed to put up more than one food, gas or lodging logo at certain interchanges. Also, the federal regulations allow a sort of "bumping" whereby the service existing closest to the interchange would have a preference. Since the purpose of the logo program is to make known to traffic on the interstate highway, those services which are most readily available, this bumping privilege and the right to erect additional signs (if there is one), would certainly seem to reduce or eliminate the chance of the location on these signs being considered to be the granting of a special or exclusive privilege or franchise.

Very truly yours,

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Approved:

  
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