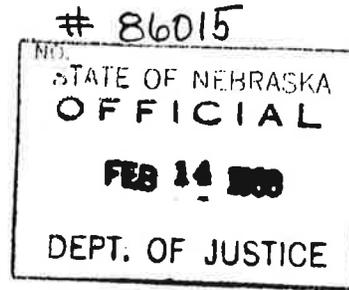


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



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

DATE: February 13, 1986

SUBJECT: Constitutionality of LB 626 - Legislative Classification

REQUESTED BY: Senator William E. Nichol
Speaker of the Legislature

WRITTEN BY: Robert M. Spire, Attorney General
John Boehm, Assistant Attorney General

This is in response to your letter of February 3, 1986. Your concern is the constitutionality of an amendment to LB 626, AM 1789, found on page 622 of the Legislative Journal.

The pertinent provision of this bill provides for the issuance of an "employment driving permit" to individuals whose license has been revoked for a violation of Neb.Rev.Stat. §§39-669.07 or 39-669.08 (Reissue 1984). The court may issue such a permit if

(a) the applicant shows by clear and convincing evidence that he or she (i) requires the use of a motor vehicle in the normal course of his or her employment and (ii) will lose his or her job if such permit is not issued; or (b) the applicant is self-employed and can prove that loss of the ability to drive the motor vehicle will prohibit or seriously impair such applicant's ability to continue such employment.

The provision goes on to provide that a person issued such an employment driving permit "shall operate a motor vehicle only during the normal course of employment."

The amendment to this bill would create the following exception to the above provisions by providing that "Any operator

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Senator William E. Nichol
February 13, 1986
Page -2-

of a local commercial truck as defined in section 60-301, taxicab, or vehicle for which a class CC operator's license is required who is convicted of a violation of section 39-669.07 or 39-669.08 shall not be eligible for an employment driving permit."

Your specific concern is the constitutionality of the classification established by this amendment. In this regard, the Nebraska Supreme Court has stated that

A legislative classification, in order to be valid, must be based upon some reason of public policy, some substantial difference of situation or circumstances, that would naturally suggest the justice or expediency of diverse legislation with respect to the objects to be classified. Classifications for the purpose of legislation must be real and not illusive; they cannot be based on distinctions without a substantial difference. (Omission of citations). Classification is proper if the special class has some reasonable distinction from other subjects of a like general character, which distinction bears some reasonable relation to the legitimate objectives and purposes of the legislation. The question is always whether the things or persons classified by the act form by themselves a proper and legitimate class with reference to the purpose of the act.

State ex rel. Douglas v. Marsh, 207 Neb. 598 at 609, 300 N.W.2d 181 (1980).

The general purpose of the employment driving permit is to allow individuals to continue their employment if the use of a motor vehicle is necessary in the course of that employment. Quite obviously, the operators of local commercial trucks, taxicabs or vehicles for which a class CC operator's license is required, are individuals for whom the use of a motor vehicle is required in the normal course of their employment. There is no readily apparent basis for separating these particular individuals from other individuals who would be eligible for an employment driving permit and treating them in a harsher fashion. Numerous other types of occupations come to mind which require an individual to use a motor vehicle in the course of his or her employment and we can see no substantial rationale for treating the individuals singled out by the amendment any differently. Consequently, we would find it difficult to defend the amendment

Senator William E. Nichol
February 13, 1986
Page -3-

to LB 626 if it were to be challenged upon these constitutional grounds.

Sincerely,

ROBERT M. SPIRE
Attorney General

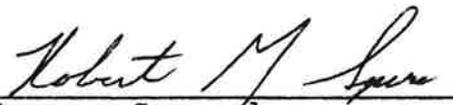


John Boehm
Assistant Attorney General

JB/bae

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

APPROVED:


Attorney General