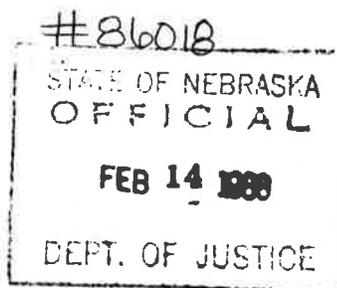


DEPARTMENT OF JUSTICE

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: Effect of LR 307 on Referendum on LB 662

REQUESTED BY: Senator Lee Rupp
Nebraska State Legislature

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

This is in response to your inquiry which pertains to Legislative Resolution 307 (1986). Section 1 of LR 307 states as follows:

A Resolution to propose an amendment to Article VII, section 1, of the Constitution of Nebraska.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE EIGHTY-NINTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

Section 1. That at the general election in November 1986 there shall be submitted to the electors of the State of Nebraska for approval the following amendment to Article VII, section 1, of the Constitution of Nebraska, which is hereby proposed by the Legislature:

CVII-1 "The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years and shall ensure that all land in this state is within political subdivisions the specific purpose of which is to provide for the operation of the common schools and each of which offers public school instruction for kindergarten through the twelfth grade. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof."

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I.

Does a Class VI school district, which includes Class I school districts within its boundaries, constitute a political subdivision "which offers public school instruction for kindergarten through the twelfth grade" under the provisions of LR 307?

The Nebraska Constitution does not classify school districts nor does LR 307. School districts are classified by statute. E.g., Neb.Rev.Stat. §79-102 (Reissue 1981). Thus, there is a threshold question of whether the classification in Neb.Rev.Stat. §79-102 (Reissue 1981) is constitutional in the event that LR 307 became operative law. There is also the question of whether or not Neb.Rev.Stat. §79-102 (Reissue 1981) would be amended in the event that LR 307 became operative law and if so, in what manner would school districts be classified. Consequently, we can not answer your question at this time.

II.

May the Legislature properly address the issue that is contained in LR 307 while LB 662 of the Eighty-ninth Legislature, First Session, awaits a vote of the people?

Section 1 of LB 662 of the Eighty-ninth Legislature, First Session (1985) provides "all Class I school districts of the state that were not within a Class VI school district on September 1, 1986, or affiliated with another school district prior to March 1, 1989, shall be merged with an existing Class II, III, IV, or V School district or become part of an existing Class VI school district." That legislative bill is the subject of a referendum which will be presented to the electorate at the next general election in November, 1986. If it were to become operative law, LR 307 would also be submitted to the electorate at the next general election in November, 1986. As noted above, it would amend section 1 of Article VII of the Constitution of Nebraska to provide that "all land in this state is within political subdivisions the specific purpose of which is to provide for the operation of the common schools and each of which offers public school instruction through the twelfth grade."

If LB 662 were approved by the electorate it seems clear that it would eliminate certain common schools by a day certain that do not offer instruction through the twelfth grade. If LR 307 were approved by the electorate it also seems clear that it would eliminate certain common schools that do not offer instruction through the twelfth grade but on a date different from that in LB 662. Thus, it appears to us that LR 307 would

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amend section 1 of LB 662. In a letter to Senator Tom Vickers under date of September 17, 1985, we stated "the Legislature is prohibited from amending or repealing any of the specific provisions of LB 662." We adhere thereto. We are therefore of the opinion that LR 307 is not a proper subject of legislative action at this time.

Sincerely,

ROBERT M. SPIRE
Attorney General

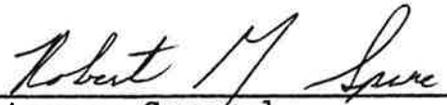


Harold Mosher
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HM/bae

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

APPROVED:



Robert M. Spire
Attorney General