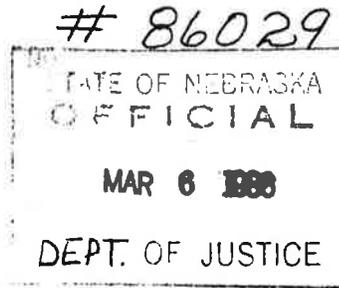


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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DATE: March 5, 1986

SUBJECT: Constitutionality of LB 1233 - Amendments to Various Crimes and Offenses

REQUESTED BY: Senator D. Paul Hartnett  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
L. Jay Bartel, Assistant Attorney General

You have requested our opinion on three questions relating to the constitutionality of LB 1233. Generally, LB 1233 would amend the statutory provisions pertaining to certain crimes and offenses, including changing provisions relating to the unauthorized use of a propelled vehicle (Neb.Rev.Stat. §28-516 (Reissue 1979)); criminal mischief (Neb.Rev.Stat. §28-519 (Supp. 1984)); offenses against another committed by a confined person (Neb.Rev.Stat. §28-933 (Supp. 1984)); and the definition of gambling (Neb.Rev.Stat. §28-1101 (Supp. 1984)).

Initially, you ask whether LB 1233 violates the constitutional requirement that "[n]o bill shall contain more than one subject." Neb. Const., Art. III, Section 14.

The Nebraska Supreme Court has adopted a liberal construction with respect to this constitutional requirement. In Midwest Popcorn Co. v. Johnson, 152 Neb. 867, 872, 43 N.W.2d 174, 178 (1950), the court stated:

An act, no matter how comprehensive, is valid as containing but one subject if a single main purpose is within its purview and nothing is included within it except that which is naturally connected with and incidental to that main purpose.

LB 1233 relates to the broad subject of "crimes and offenses." The amendments proposed under the bill are all clearly related to and naturally connected with criminal offenses, including amending the definition of "gambling" and other terms contained in §28-1101. Based on the liberal

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interpretation of Article III, Section 14 adopted by the Nebraska Supreme Court, we conclude that LB 1233 does not contain more than one subject, and, therefore, does not violate this constitutional provision.

Your second question concerns whether LB 1233 violates the constitutional requirement that the subject of the bill "shall be clearly expressed in the title." Neb. Const., Art. III, Section 14.

It is well-established that a court will not hold legislation in violation of the title provision of Article III, Section 14 if the title calls attention to the subject matter of the bill, and the portion of the bill challenged is germane to the purpose announced in the title. Blackledge v. Richards, 194 Neb. 188, 192, 231 N.W.2d 319, 323 (1975).

The title of LB 1233 expresses that the bill relates to "crimes and offenses," and, furthermore, that the bill proposes to amend §28-1101, and to "redefine terms." Section 4 of LB 1233, which provides for the amendment of §28-1101 by changing certain terms utilized in the definition of "gambling," is, in our opinion, within the subject matter expressed in the title, and is germane to the purpose announced in the title. Accordingly, we do not believe that LB 1233 violates the title provision of Article III, Section 14.

Your final question concerns whether the definition of "lottery" in Section 4 of LB 1233 is subject to constitutional attack as violative of due process on grounds of vagueness and overbreadth. Specifically, you ask whether the absence of specific definitions for the terms "roulette," "keno," "craps," "blackjack," "poker," and "any other gambling scheme commonly referred to as casino gambling," renders this portion of the bill unconstitutionally vague.

It is fundamental that, in order to satisfy the constitutional requirement of due process of law, a crime must be defined with sufficient definiteness to inform persons subject to its application what conduct will render them liable to its penalties. State v. Metzger, 211 Neb. 593, 595, 319 N.W.2d 459, 461 (1982). In State v. Shiffbauer, 197 Neb. 805, 808, 251 N.W.2d 359, 362 (1977), the court, discussing this requirement of due process, stated:

. . . [T]his prohibition against excessive vagueness does not invalidate every statute which a reviewing court believes could have been drafted with greater precision. All the Due Process Clause requires is that

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the law give sufficient warning that men may conform their conduct so as to avoid that which is forbidden.

Applying these principles to the questioned portion of LB 1233, we do not believe the lack of specific definitions of the terms "roulette," "keno," "craps," "blackjack," "poker," and "any other gambling scheme commonly referred to as casino gambling," renders this aspect of the bill unconstitutionally vague. In our view, the use of these terms alone provides sufficient notice and information as to what conduct is proscribed by the act.

Very truly yours,

ROBERT M. SPIRE  
Attorney General

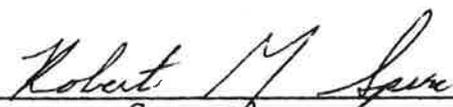


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cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED:

  
Attorney General