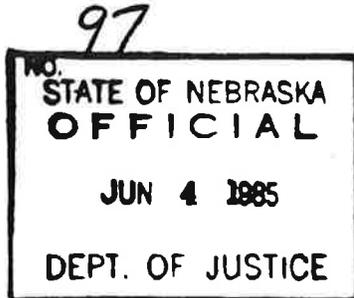


Jim Wass

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



May 31, 1985

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
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Senator Loran Schmit
Nebraska State Legislature
State Capitol, Room 1103
Lincoln, Nebraska 68509

Dear Senator Schmit:

You have asked our opinion on the constitutionality of three proposals to fund the construction of plants to produce grain alcohol.

One proposal would provide a grant of funds appropriated from the general fund for the construction of such plants.

A second proposal would provide a refundable tax credit for the production of alcohol with any excess of a refund over a producer's tax liability to be paid by the Department of Revenue from the general fund.

The third proposal would be similar to the second except that the excess over the tax liability would not be refundable, but would carry over as a credit against tax liability in future years.

It seems quite clear that the purpose of the proposals set forth above is to promote the development of alcohol plants in the state. In light of this we point out that in the adoption of Article XIII, Section 2, of the Nebraska Constitution, a mechanism has been created for the encouragement of industrial development. We doubt that there would be any question but that none of the three proposals suggested would meet the requirements or fall within the requirements of this provision of our Constitution.

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Your question is directed to the constitutionality of the proposals considering the provision of Article XIII, Section 3, of the Nebraska Constitution, which provides in part: "The credit of the state shall never be given or loaned in aid of any individual, association, or corporation, . . ."

In Oxnard Beet Sugar Company v. State, 73 Neb. 57, 102 N.W. 80 (1905), our Supreme Court held a statute offering a bounty for the manufacture of sugar and chicory unconstitutional for the reason that the Legislature cannot appropriate or pledge the public money for private purposes.

Later cases to the same effect are United Community Services v. Omaha National Bank, 162 Neb. 786, 77 N.W.2d 576 (1956), and State ex rel. Beck v. City of York, 164 Neb. 223, 82 N.W.2d 269 (1957).

It should be noted that in the above cases our court held that money could not be paid out of the State Treasury to benefit a specific entity. Clearly, the first two proposals requiring payment of money from the State Treasury would be unconstitutional.

In regard to your particular question of the right of the Legislature to provide for the assistance of a particular entity by way of a carry-over tax credit, that is, being excused from the payment of a tax as distinguished from being the recipient of tax money already paid into the state General Fund, we have been unable to find any case in which our Supreme Court has addressed that particular issue.

Since we have no clear guidelines to follow, we are unable to say, with any degree of certainty, what our Supreme Court would hold with regard to the validity of a carry-over tax credit in aid of development of grain alcohol plants.

Very truly yours,

ROBERT M. SPIRE
Attorney General



Bernard L. Packett
Assistant Attorney General

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