

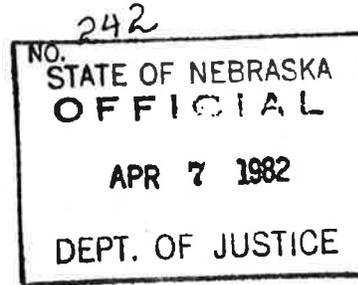
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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

April 6, 1982

Senator John DeCamp
Member of the Legislature
1116 State Capitol
Lincoln, Nebraska 68509



PAUL L. DOUGLAS
Attorney General
GERALD S. VITAMVAS
Deputy Attorney General
JOHN R. THOMPSON
Deputy Attorney General

Dear Senator DeCamp:

You have submitted to us a copy of your latest proposed amendment to LB 816, and have asked our opinion as to its constitutionality. In our opinion it can be successfully defended against constitutional attack.

Your amendment would strike all of the original sections of the bill, and all amendments, and substitute nine new sections. The first section recites that it is the intention of the Legislature that payments to political subdivisions be made pursuant to §§77-3611 to 77-3615, unless the Supreme Court holds them unconstitutional. It then provides that if, by January 1, 1983, the court has not issued a mandate on the subject, or has held those sections unconstitutional, payments shall be made pursuant to Sections 2 to 6 of LB 816. In our Opinion No. 230, dated March 26, 1982, we stated our opinion to be that making the application of a statute contingent upon a future ascertainable event was proper. We believe that is what is involved in Section 1 of your proposed amendment.

Section 2 of your amendment would appropriate an additional \$45 million to the School Foundation and Equalization Fund, to be distributed pursuant to §§79-1333 to 79-1334. In our Opinion No. 189, dated February 8, 1982, we reached the conclusion that the method of distribution of that fund set forth in §79-1334 was proper, and that simply adding more money to be so distributed would have no effect on its constitutionality.

Section 3 of your amendment would provide for an appropriation of an additional \$2 million for aid to technical community colleges, to be distributed pursuant to §§79-2651 to 79-2653. In our Opinion No. 213, dated March 8, 1982, we

Assistants:
Bernard L. Packett
Mel Kammerlohr
Harold I. Mosher
Ralph H. Gillan

Marilyn B. Hutchinson
Patrick T. O'Brien
J. Kirk Brown
Royce N. Harper

Ruth Anne E. Galter
John M. Boehm
G. Roderic Anderson
Dale A. Comer
Stanley D. Cook

Martel J. Bundy
Mark D. Starr
Dale D. Brodkey
Frank J. Hutfless

found nothing unconstitutional about the method of distributions specified in those sections, and said that adding more money to the pot to be distributed would not effect its constitutionality.

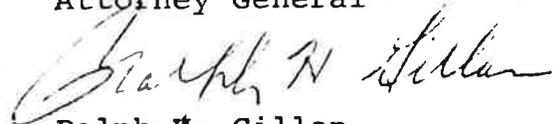
Sections 4, 5, and 6 of your amendment would amend §§77-27,136, 77-27,137, and 77-27,137.01. As amended, these sections would provide for distribution of \$17,900,000 to incorporated municipalities on the basis of the ratio of the population of each municipality to the population of all municipalities in the state. These sections would also provide for the payment of \$17,700,000 to counties, to be allocated on the basis of the ratio of the property tax levied by each county for county purposes to the total amount of property taxes levied by all counties for county purposes.

We are confident that the distribution to the municipalities on the basis of their populations can be defended. In our Opinion No. 226, dated March 24, 1982, we also reached the conclusion that we could defend the distribution of money to the counties on the basis of the ratio of property taxes collected by the county for county purposes, despite some doubt cast upon the question by State ex rel. Douglas v. Marsh, 207 Neb. 598, 300 N.W.2d 181 (1980). We are still of that opinion.

We are therefore of the opinion that your amendments to LB 816 could be successfully defended against constitutional attack.

Very truly yours,

PAUL L. DOUGLAS
Attorney General



Ralph H. Gillan
Assistant Attorney General

RHG:jmf

tl

cc: Patrick O'Donnell
Clerk of the Legislature