



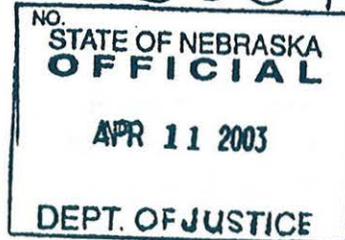
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#03009

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SUBJECT: Changing the Boundaries of Community College Areas

REQUESTED BY: Senator Tom Baker
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Lynn A. Melson, Assistant Attorney General

You have requested the opinion of this office regarding the constitutionality of potential legislation to change the boundaries of the community college areas. The state is currently divided into six community college areas pursuant to Neb. Rev. Stat. § 85-1504 (1999). Your question is whether it is constitutional to change, legislatively, the boundaries of the community college areas or whether the counties would be required to vote on their "district affiliation." It is our understanding, after our telephone conversation, that you do not have a concern as to a specific constitutional provision. Rather, you are asking our general opinion whether this type of legislation may be constitutionally suspect in light of the original statutory scheme which provided for a vote of area citizens prior to the forming or joining of community college areas.

The current statutes governing community colleges are found at Neb. Rev. Stat. §§ 85-1501 through 85-1542 (1999 and Cum. Supp. 2002). In reviewing the history of these statutes, we have found that the current scheme was enacted in 1975 after provisions of a prior act, the Technical Community College Area Act, were found unconstitutional by the Nebraska Supreme Court in *State ex rel. Western Nebraska Technical Community College Area v. Tallon*, 192 Neb. 201, 219 N.W.2d 454 (1974). Specifically, a prior statute was found to provide for a property tax to support a state purpose contrary to Article VIII, § 1A of the Nebraska Constitution. As described by the Nebraska Supreme Court, the Technical Community College Area Act of 1971 "designated eight different community college areas but did not place each of the counties in the State of Nebraska into an area but left the forming or joining of areas to the vote of the citizens, or otherwise for designation by the Legislature during the 1973 legislative session, since

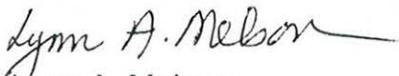
Senator Tom Baker
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the Act did not become fully effective operatively until July 1, 1973." *Id.* at 205, 219 N.W.2d at 457. Neb. Rev. Stat. § 85-1504, which divides the state into six community college areas, was enacted in 1975 as part of the new statutory scheme to address the concerns of the Nebraska Supreme Court. The old statutory provisions which provided for a vote to be held prior to the establishment of these community college areas were not included in the new statutory scheme.

We are unaware of any state constitutional provision that would restrict the Legislature in changing the boundaries of any of the community college areas. As a general principle, the Legislature may legislate on any subject not inhibited by the state or federal constitutions and restrictions on this legislative power will not be inferred unless the restriction is clearly implied. *State ex rel. Creighton Univ. v. Smith*, 217 Neb. 682, 353 N.W.2d 267 (1984); *Lenstrom v. Thone*, 209 Neb. 783, 311 N.W.2d 884 (1981). While Nebraska statutes at one time provided for a vote of the citizens in an area as one means of establishing a community college area, the statutes which were enacted after the community college areas had been established no longer provide such an option and we know of no constitutional provision that would require that the voters of each county or community college area vote on a change in the boundaries of their community college area.

Sincerely,

JON BRUNING
Attorney General


Lynn A. Melson
Assistant Attorney General

Approved:


Attorney General

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