

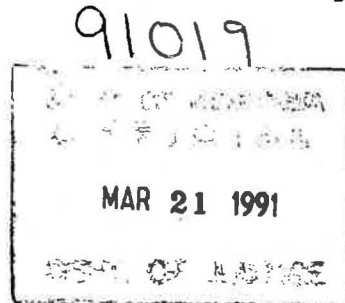


STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL



DATE: March 14, 1991

REQUESTED BY: Senator David F. Bernard-Stevens

WRITTEN BY: Don Stenberg, Attorney General
David Edward Cygan, Assistant Attorney General

SUBJECT: Constitutionality of LB 695, Authorizing refusal of motor vehicle registration due to outstanding distress warrants.

LB 695 would permit the county treasurers to adopt policies under which they may refuse to receive or accept application or registration fees or to issue registration certificates for motor vehicles unless the applicants exhibit proof of payment of all distress warrants outstanding in the county for personal property. Thus, those individuals who have not properly paid their distress warrants may not be permitted to register their motor vehicles. You have requested our opinion as to whether LB 695 violates the Constitution of Nebraska. We believe that the bill is constitutionally permissible. Our analysis is set forth below.

As we have noted on previous occasions, a general question on the constitutionality of a legislative bill will necessarily result in a general response from this office. See Opinion of the Attorney General 89028, April 4, 1989; Opinion of the Attorney General 85157, December 20, 1985. If we are to address specific questions or potential problems with a bill they must be set out in the opinion request. You have simply asked whether LB 695 violates our state constitution in any sense. We must, therefore, provide a general response to your question in the absence of any description of your specific concerns.

L. Jay Bartel
J. Kirk Brown
Laurie Smith Camp
Elaine A. Chapman
Delores N. Coe-Barbee
Dale A. Comer
David Edward Cygan

Mark L. Ellis
James A. Elworth
Lynne R. Fritz
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein

Donald A. Kohtz
Sharon M. Lindgren
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Harold I. Mosher
Fredrick F. Neid

Paul N. Potadle
Marie C. Pawol
Kenneth W. Payne
LeRoy W. Sievers
James H. Spears
Mark D. Starr
John R. Thompson

Susan M. Ugai
Barry Waid
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

Senator David F. Bernard-Stevens
March 14, 1991
Page -2-

We have contacted you and your staff, and you were unable to identify any specific questions regarding the constitutionality of the bill. We have, at your direction, contacted the Nebraska Association of County Officials. It is now our understanding that the sole concern of this opinion request is the impact of the proposed legislation upon joint owners of a motor vehicle where an individual is delinquent to the county on his payment of personal property taxes. Initially, permit us to direct your attention to the fact this hypothetical situation is no different than a sale of real estate for taxes where such real estate is held in joint tenancy, and one of the joint tenants is delinquent on real property taxes. Individuals should exercise discretion as to whom they choose for a business or financial partner.

We assume that the question before us is whether the joint owner of a motor vehicle is denied due process of law when the county treasurer refuses registration of the motor vehicle due to the outstanding distress warrant of the partner. As indicated above, LB 695 creates a mechanism by which a county sheriff may notify the county treasurer of outstanding distress warrants for personal property in the county. The county treasurer then may refuse to register motor vehicles for the applicants until they have exhibited proof of payment of the distress warrant. The issue that comes immediately to our attention is whether or not such action requires substantive due process, and if so, has substantive due process already been afforded. Note immediately that the operation of a motor vehicle in the state is a privilege afforded by the state. Bell v. Burson, 402 U.S. 535 (1971). Although the revocation of such privilege may initiate the requirements of substantive due process, initial issuance of such a privilege does not. The reason why is that the applicant has no property interest based upon an expectation of issuance of the registration. Id. Accordingly, the answer must be that the joint owner is not denied due process, for the reason that he/she was never entitled to due process.

Senator David F. Bernard-Stevens
March 14, 1991
Page -3-

We foresee no constitutional difficulty with LB 695. If you have more specific questions regarding the constitutionality of LB 695, we will be willing to provide you with a more detailed analysis.

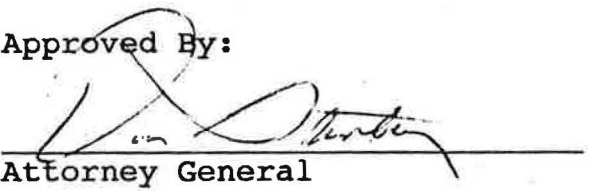
Respectfully Submitted,

DON STENBERG
Attorney General



David Edward Cygan
Assistant Attorney General

Approved By:



Attorney General

32-23-6.1