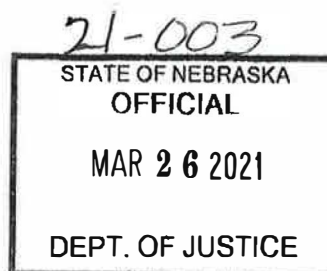




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ATTORNEY GENERAL



SUBJECT: Does LB 528, as Amended, Violate the Single Subject Requirement in Neb. Const. art. III, § 14?

REQUESTED BY: Senator Lynne Walz
Nebraska State Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General
Lynn A. Melson, Assistant Attorney General

INTRODUCTION

You have requested an opinion from this office on the constitutionality of LB 528, titled: "Provide, change, and eliminate provisions relating to education." A proposed amendment, AM556, was filed on March 16, 2021, and would replace the bill. You have specifically asked whether LB 528, as amended, would violate Neb. Const. art. III, § 14, which requires that no bill shall contain more than one subject.

LB 528, as amended, amends Nebraska statutes concerning various topics which include the following: (1) updating references to "accredited" instead of "regionally accredited" postsecondary institutions in numerous state statute; (2) leasing of school lands; (3) school district budgets and budget hearings; (4) mandatory school attendance; (5) temporary teaching certificates; (6) changes to the Tax Equity and Educational Opportunities Support Act; (7) valuation of and distribution of funds to educational service units; (8) school classifications; (9) use and reporting of income from solar and wind agreements on school lands; (10) college savings plans; (11) scholarship programs; and, (12) the contents of school student identification cards.

Neb. Const. art. III, § 14 provides, in part: “No bill shall contain more than one subject, and the same shall be clearly expressed in the title.” You have referred to LB 528, as amended, as a “Christmas tree bill” and you are correct that a variety of statutes would be amended by this bill. However, as this office has noted in prior opinions, the Nebraska Supreme Court has adopted a liberal construction with respect to this constitutional requirement. See, e.g., Op. Att’y Gen. No. 03012 (May 7, 2003), Op. Att’y Gen. No. 89003 (January 23, 1989), Op. Att’y Gen. No. 87018 (February 11, 1987), Op. Att’y Gen. No. 86029 (March 6, 1986).

In *Midwest Popcorn Co. v. Johnson*, 152 Neb. 867, 43 N.W.2d 174 (1950), the Court considered the Tax Appraisal Board Act, which dealt with taxation of property and the establishment of a tax appraisal board, and held that it did not violate the single subject rule and was constitutional. “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.” *Id.* at 872, 43 N.W.2d at 178. Here, other provisions of the act were found to be incidental and germane to the subject of taxation.

Similarly, in *Anderson v. Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (1967), *appeal dismissed*, 390 U.S. 714 (1968), the Court considered a bill providing for a sales tax, a use tax, an income tax, and a franchise tax and found it constitutional. The Court found that all of the provisions in the bill related to the general subject of taxation stated in the bill’s title. “If an act has but one general object, no matter how broad that object may be, and contains no matter not germane thereto, and the title fairly expresses the subject of the bill, it does not violate Art. III, Section 14, of the Constitution (citation omitted) This Court holds that the provisions of LB 377 contain but one general subject, taxation, and that it does not violate the Constitution of Nebraska.” *Id.* at 408-409, 155 N.W.2d at 332.

More recently, the Court considered a bill which included provisions relating to several different taxes, as well as provisions on tax refund procedures and the retroactive application of judicial decisions finding tax provisions to be unconstitutional, and held that the bill did not violate the single subject rule of Neb. Const. art. III, § 14. The Court found that all provisions of the bill were germane to the broad subject of taxation. *Jaksha v. State*, 241 Neb. 106, 486 N.W. 2d 858 (1992).¹

Here, although the provisions of LB 528, as amended, might be said to relate to the broad subject of “education” as stated in the bill’s title, the bill now touches on at least a dozen different areas. While the Court has adopted a liberal construction of art. III,

¹ We note that the single subject rule for constitutional amendments is different than the single subject rule for legislative bills. *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 853 N.W.2d 494 (2014). Therefore, the Nebraska Supreme Court’s discussion of a single subject rule in *Loontjer*, or in the more recent case of *State ex rel. Wagner v. Evnen*, 307 Neb. 142, 948 N.W.2d 244 (2020), is not applicable here.

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§ 14, the number and variety of the different topics included in LB 528 may distinguish it from the bills considered by the Court in the cases discussed above. As the connection of these various provisions appears tenuous, we have some concerns regarding the constitutionality of the legislation. However, we cannot say that LB 528 clearly violates Neb. Const. art. III, § 14.

Sincerely,

DOUGLAS J. PETERSON
Attorney General


Lynn A. Melson
Assistant Attorney General

Approved by:



Attorney General

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

09-761-29