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No. 23-003

STATE OF NEBRASKA
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MAR 21 2023

DEPT. OF JUSTICE

SUBJECT: Authority of the Legislature to change the location of the headquarters of the Nebraska Game and Parks Commission (LB 397).

REQUESTED BY: Senator Steve Erdman
Nebraska Legislature

WRITTEN BY: Mike Hilgers, Attorney General
Carlton W. Wiggam, Assistant Attorney General

INTRODUCTION

You have requested our opinion concerning the Legislature's authority to change a statute which specifies the location of a state office. Specifically, you ask whether the Legislature may change the location of the headquarters for the Nebraska Game and Parks Commission (the "Commission") by statute or if such change is prohibited by the Nebraska Constitution. Neb. Rev. Stat. § 37-104 (2016) provides, in part, that the Commission may enter into an agreement with the city of Lincoln for a headquarters building, and other related facilities, to be located at described property within Lincoln. LB 397 would amend § 37-104 to provide that, beginning on January 1, 2025, the location of the Commission headquarters will be in Sidney, Nebraska, and that all Commission regular meetings will be held in Sidney. The bill would authorize the Commission to enter into an agreement with the city of Sidney for a headquarters building and other related facilities.

As a preliminary note, § 37-104 is not the only statutory section which describes the location of the Commission headquarters as being in the city of Lincoln. Neb. Rev. Stat. § 37-328 (2016) provides that the Commission may “acquire a site in Lincoln and erect thereon one or more buildings to serve the commission as a state headquarters.” To avoid a potential conflict between the two statutory provisions, § 37-328 would also need to be amended to account for the change in location of the Commission headquarters.

ANALYSIS

We begin with an examination of the authority the Legislature has and, thus, what it may change via the legislative process. Neb. Const., art. III, § 1,

vests complete legislative authority of the state in the Legislature, subject only to the rights of initiative and referendum reserved by the constitution to the people and to any specific restrictions on the legislative authority found in the constitution itself. In other words, the Legislature has plenary legislative authority limited only by the state and federal Constitutions. The Nebraska Constitution is not a grant, but, rather, a restriction on legislative power, and the Legislature may legislate on any subject not inhibited by the constitution. Consequently, courts can enforce only those limitations which the Nebraska Constitution imposes.

State ex rel. Peterson v. Shively, 310 Neb. 1, 11, 963 N.W.2d 508, 516-17 (2021). The Legislature has the authority to legislate on any subject not specifically restricted by the Nebraska Constitution. Given these boundaries, we turn to the Nebraska Constitution to determine what, if any, restrictions would prohibit the Legislature from statutorily changing the location of the Commission headquarters.

The Nebraska Constitution does not provide any restrictions explicitly preventing the relocation of the Commission headquarters from Lincoln to Sidney. However, Article III, § 18, of the Nebraska Constitution does provide a general restriction against local or special laws. Article III, § 18, contains a list of specific cases where the Legislature is prohibited from passing local or special laws, none of which are applicable to the present legislation. In addition to the list of specific restrictions, Article III, § 18, provides a more general restriction that the Legislature “shall not pass local or special laws in any of the following cases.... Granting to any corporation, association, or individual any special or exclusive privileges, immunity, or franchise whatever.... In all other cases where a general law can be made applicable no special law shall be enacted.” Unlike the specific prohibitions contained in Article III, § 18, the general restriction does not completely prohibit special legislation. The Nebraska Supreme Court has stated:

[i]f ... the section in question is special legislation, still it is within the power of the Legislature to enact such special legislation covering the matters ... where, in its judgment, the subject or matters sought to be remedied could not be properly remedied by a general law, and where the Legislature has a reasonable basis for the enactment of the special law.

State ex rel. Spillman v. Wallace, 117 Neb. 588, 594, 221 N.W. 712, 713-14 (1928). Thus, we must examine LB 397 to determine if it is special legislation, and if it is, whether such special legislation is permissible.

In *Yant v. City of Grand Island*, 279 Neb. 935, 784 N.W.2d 101 (2010), the Nebraska Supreme Court addressed a similar question to the one presented by your request. In *Yant*, the Legislature had changed a statute from providing that the State Fair must be located in or near the city of Lincoln to the city of Grand Island. *Id.* at 937, 784 N.W.2d at 105. Plaintiffs sued on the basis that this move constituted impermissible special legislation because it provided a specific city for the location of the State Fair rather than a broad framework for determining where the State Fair should be located. *Id.* at 940-44, 784 N.W.2d at 106-109. To determine whether the legislative act constituted special legislation, the Court examined two issues: (1) whether it created a permanently closed class and (2) whether it created an arbitrary and unreasonable method of classification. *Id.* at 940, 784 N.W.2d at 106. First, the Court concluded that it was not a permanently closed class because many other areas of statute specify locations of state offices, facilities, and infrastructure. The Court also concluded the location of state facilities are for a public purpose which is not a special privilege even though cities where these facilities are located may receive incidental benefits. *Id.* at 940-43, 784 N.W.2d at 106-107. Second, the Court concluded designating one city was not an unreasonable and arbitrary classification because there is only one State Fair, which “necessarily requires selecting one location.” *Id.* at 943-44, 784 N.W.2d at 108-110. In addition, the Court noted the Legislature had not randomly picked a location on the map, rather the decision was the culmination of three years of studies, public hearings and, ultimately, discussion at the committee hearing and during floor debate of the bill. *Id.* at 944, 784 N.W.2d at 108. Based on these facts, the Court concluded that the Legislature’s decision to relocate the State Fair and its choice of location was not arbitrary and unreasonable. Thus, the Court held the move was not unconstitutional special legislation. *Id.*, 784 N.W.2d at 108-109.

LB 397 presents facts similar to *Yant* as to the question of creating a permanently closed class. The Legislature previously made similar designations and it is not granting a special privilege to the city of Sidney because monetary benefits are incidental to the public benefits expressed in the committee hearing of LB 397 held on February 9, 2023. As to the question of whether such legislation is arbitrary and unreasonable, we note that while the fact that there can only be one location for the Commission headquarters is identical to moving the State Fair, the Court in *Yant* focused on the process that was followed in making the determination for the new location of a state facility. From the facts presented in your letter and the testimony offered at the committee hearing on February 9, 2023, we cannot say whether, if LB 397 were enacted, the process for its adoption would satisfy a court that the legislation was not arbitrary and unreasonable. However, what is clear is that the more public input that is generated in deciding a legislative proposal like LB 397, the more likely a court will be to determine that the resulting decision was not arbitrary or unreasonable.

CONCLUSION

In summary, based on *Yant*, it is permissible for the Legislature to pass a bill which relocates state government infrastructure, such as the Commission headquarters, to a particular city so long as there is an express public purpose for the move and the determination of the location is not arbitrary or unreasonable. While LB 397 satisfies the first of these requirements, it is uncertain from the record presented whether the second requirement would be met. Thus, we conclude that LB 397 is not on its face unconstitutional special legislation. We are unable, however, to reach a conclusion as to whether a court would consider the decision to move the Commission headquarters arbitrary and unreasonable.

Sincerely,

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Approved by:



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