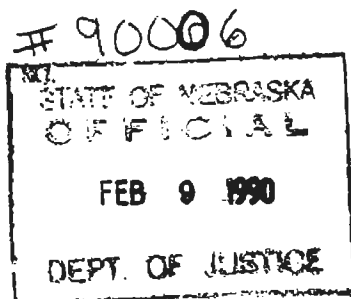


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA • STATE CAPITOL
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ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
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DATE: February 6, 1990

SUBJECT: LB 869, Limitations on Asbestos Disposal

REQUESTED BY: Senator Glenn Goodrich,
District 20
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Linda L. Willard, Assistant Attorney General

You have asked us to review the constitutionality of LB 869 as it relates to the United States Supreme Court case entitled City of Philadelphia v. New Jersey, 437 U.S. 617, 98 S.Ct. 2531, 57 L.Ed.2d 475 (1978). LB 869 would prohibit the disposal of any asbestos or waste containing asbestos from outside the state at any disposal site within this state. It is our determination after review that this legislative bill is probably unconstitutional based on the Supreme Court's reasoning in the above cited case.

In the City of Philadelphia case the Court was presented with a question of whether the State could prohibit the importation of most solid or liquid waste which originated or was collected outside the territorial limits of the State. The Court determined that the New Jersey law was in violation of the Commerce Clause of the United States Constitution. In reaching its decision, the Court cited two earlier cases which held "...a State may not accord its own inhabitants a preferred right of access over consumers in other States to natural resources located within its borders." (Citations omitted) 437 U.S. at 627.

The Court noted that "What is crucial is the attempt by one State to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade." Id. at 628.

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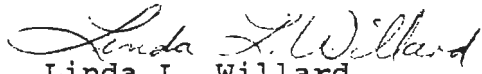
Glenn Goodrich
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Finally, the Court explained the necessity of the Commerce Clause in stating "Today, cities in Pennsylvania and New York find it expedient or necessary to send their waste into New Jersey for disposal, and New Jersey claims the right to close its borders to such traffic. Tomorrow, cities in New Jersey may find it expedient or necessary to send their waste into Pennsylvania or New York for disposal, and those states might then claim the right to close their borders. The Commerce Clause will protect New Jersey in the future, just as it protects her neighbors now, from efforts by one State to isolate itself in the stream of interstate commerce from a problem shared by all." Id. at 629

Based on the decision in City of Philadelphia v. New Jersey, supra, it is our determination that LB 869 would be in violation of the Commerce Clause of the Constitution of the United States of America.

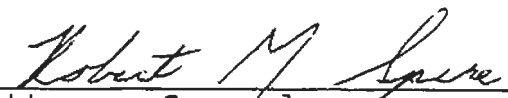
Respectfully yours,

ROBERT M. SPIRE
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cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED:


Attorney General

28-14-7