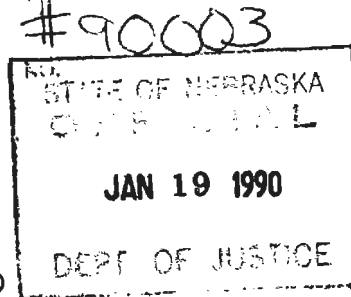


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: January 18, 1990

SUBJECT: Constitutionality of Homestead Exemption Legislation

REQUESTED BY: Senator W. Owen Elmer  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to the constitutionality of legislation providing exemptions from property taxation to residential real property. Your request simply states there are "several pieces of legislation dealing with this subject . . . ." We assume your request refers to legislation granting a homestead exemption. In the absence of a more specific request, we can only provide you with some general advice regarding the subject of your question.

Article VIII, Section 2, of the Nebraska Constitution, provides, in part:

. . . No property shall be exempt from taxation except as provided in the Constitution. The Legislature may by general law provide that a portion of the value of any residence actually occupied as a homestead by any classification of owners as determined by the Legislature shall be exempt from taxation.

Prior to 1983, the Legislature, pursuant to this constitutional authority, provided a general homestead exemption based on the exemption of a percentage of the value of homestead property in the state. Neb.Rev.Stat. §77-3506 (Cum.Supp. 1980) (repealed Laws 1983, LB 396). Last year, the Legislature enacted a general homestead provision for the 1989 tax year. 1989 Neb. Laws, LB 84, §§7-15 (codified at Neb.Rev.Stat. §§77-3501 and 77-3509.03 to 77-3529 (Supp. 1989)). Thus, there is no constitutional impediment to the enactment of legislation providing for the exemption of a portion of the value of any property actually occupied as a homestead, consistent with the specific terms of Article VIII, Section 2. As we have noted in prior opinions, the principal concern to be considered by the Legislature in acting

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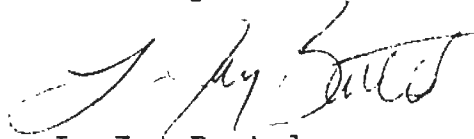
Senator W. Owen Elmer  
January 18, 1990  
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pursuant to this constitutional authority relates to assurance that any such legislation would base exemption on the "value" of homestead property, and would satisfy the constitutional requirement that any exemption provided be "by any classification of owners as determined by the Legislature. . . ." Report of Attorney General 1979-1980, Opinion No. 223, Feb. 8, 1980, p. 317; Report of Attorney General 1973-1974, Opinion No. 62, May 31, 1973, p. 83.

In conclusion, it is our opinion that, assuming any legislation you may propose establishing a homestead exemption satisfies the criteria outlined above, the requirement of uniformity of taxation under Article VIII, Section 1, would not be violated by the enactment of such legislation.

Very truly yours,

ROBERT M. SPIRE  
Attorney General

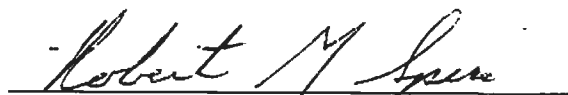


L. Jay Bartel  
Assistant Attorney General

7-331-2

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

APPROVED:

  
Attorney General