



Dave Heineman
Governor

STATE OF NEBRASKA

OFFICE OF THE GOVERNOR
P.O. Box 94848 • Lincoln, Nebraska 68509-4848
Phone: (402) 471-2244 • dave.heineman@nebraska.gov

April 2, 2012

Mr. President, Mr. Speaker, and
Members of the Legislature
State Capitol
Lincoln, NE 68509

Dear Mr. President and Members of the Legislature:

I am returning LB1072e with certain line-item reductions.

I have no objection to sections of this miscellaneous claims bill other than section 1 which proposes payments totaling \$2,499,342.98 to pay fifty claims submitted by subcontractors of the Boys and Girls Home corporation. These subcontractors were not directly engaged in any contract with the State of Nebraska.

The State has satisfied its obligations under Neb. Rev. Stat. § 43-290 and under its contract with Boys and Girls Home, Inc. As the State is not an insurer of private contracts, I object to this attempt to make the taxpayers responsible for debts incurred by a private organization. Furthermore, paying these claims as LB 1072 proposes would violate the Nebraska Constitution.

Article III, Section 18 of the Nebraska Constitution prohibits special legislation, stating that “The Legislature shall not pass local or special laws in any of the following cases, that is to say: ... Granting to any corporation, association, or individual any special or exclusive privileges, immunity, or franchise whatever....”

On two occasions, the Nebraska Supreme Court held that appropriations similar to those set forth in section 1 of LB 1072 amounted to unconstitutional legislation and voided the legislative efforts to make payments to partially reimburse the impacted individuals. Similar to the current situation, assertions were made that an appropriation needed to be made due to the negligent actions of a state agency and its employees in managing the situation.

In the early 1990s, the Nebraska Legislature concluded that while the State had no legal obligation to provide money for the reimbursement of creditors of the failed Commonwealth Savings Company, it had a moral obligation to do so and appropriated money for this purpose. Then, LB 272A was passed and enacted in 1990 to appropriate money for reimbursement of Commonwealth’s creditors. The bill’s constitutionality was challenged in court.

The Nebraska Supreme Court ruled in the case of *Haman v. Marsh*, 237 Neb. 699, 467 N.W.2d 836 (1991), that no moral obligation to pay these creditors existed and that the bill's appropriation amounted to unconstitutional special legislation.

The court explained that "a moral obligation attaches when there is a law [which] is passed notifying and warning the taxpayer and the citizen generally that the state ... will undertake the burden of such damages." 467 N.W.2d at 847. Citing to the legal arguments made on behalf of the taxpayer that filed the lawsuit, the court also noted that legislative appropriations "in response to what are deemed to be moral obligations, invite open-ended appeals from those claiming injury where there is an arguable connection between that injury and state governmental activity." *Id.*

The court further ruled that a legislative act violates Neb. Const. art. III, § 18, as special legislation... by creating a permanently closed class. Since the court ruled that there was no moral obligation on the part of the State to reimburse the creditors, and because creditors of Commonwealth constituted a closed class, the LB 272A appropriation was found to be special legislation and ruled unconstitutional.

The Commonwealth creditors then sought reimbursement via the state claims process, eventually filing miscellaneous claims with the State Claims Board. When the Legislature then passed its 1993 claims bill, it included appropriations for these miscellaneous claims.

That bill's constitutionality was quickly challenged in court. The Nebraska Supreme Court determined that the claims bill was an attempt to circumvent the court's *Haman* ruling, and again found the Legislature's action to be unconstitutional special legislation.

The court decided that "the Legislature is empowered to make appropriations to meet the legal obligations of the state The Legislature is not empowered to make appropriations for purely charitable purposes." *Henry v. Rockey*, 246 Neb. 398, 518 NW 2d 658, 663 (1994).

While I appreciate, respect, and share your concerns about the subcontractors of the Boys and Girls Home corporation, those concerns and sympathy do not provide an adequate legal basis for the appropriation of taxpayer money authorized in LB 1072. The present circumstances are similar to the facts presented to the Nebraska Supreme Court in the *Haman* and the *Henry* cases. This bill's proposal to pay these miscellaneous claims violates the Nebraska Constitution. This component of LB 1072 is unwise and improper.

For these reasons, I urge you to sustain my line-item vetoes of LB 1072.

Sincerely,



Dave Heineman
Governor