

SIXTH DAY - JANUARY 14, 2009

LEGISLATIVE JOURNAL

**ONE HUNDRED FIRST LEGISLATURE
FIRST SESSION**

SIXTH DAY

Legislative Chamber, Lincoln, Nebraska
Wednesday, January 14, 2009

PRAYER

The prayer was offered by Senator Heidemann.

ROLL CALL

Pursuant to adjournment, the Legislature met at 10:00 a.m., President Sheehy presiding.

The roll was called and all members were present except Senators Dubas and White who were excused; and Senators Christensen and Friend who were excused until they arrive.

CORRECTIONS FOR THE JOURNAL

The Journal for the fifth day was approved.

REFERENCE COMMITTEE REPORT

The Executive Board submits the following report:

LB/LR	Committee
LB156	Judiciary
LB157	Banking, Commerce and Insurance
LB158	Business and Labor
LB159	Revenue
LB160	Natural Resources
LB161	Revenue
LB162	Revenue
LB163	Education
LB164	Revenue
LB165	Revenue
LB166	Revenue
LB167	Government, Military and Veterans Affairs
LB168	Government, Military and Veterans Affairs
LB169	Appropriations
LB170	Judiciary

LB171	Revenue
LB172	Health and Human Services
LB173	Health and Human Services
LB174	Urban Affairs
LB175	Transportation and Telecommunications
LB176	Banking, Commerce and Insurance
LB177	Banking, Commerce and Insurance
LB178	Appropriations
LB179	Natural Resources
LB180	Natural Resources
LB181	Transportation and Telecommunications
LB182	Appropriations
LB183	Transportation and Telecommunications
LB184	Natural Resources
LB185	Judiciary
LB186	Revenue
LB187	Nebraska Retirement Systems
LB188	Nebraska Retirement Systems
LB189	General Affairs
LB190	Judiciary
LB191	Government, Military and Veterans Affairs
LB192	Banking, Commerce and Insurance
LB193	Appropriations
LB194	Business and Labor
LB195	Health and Human Services
LB196	Health and Human Services
LB197	Education
LB198	Health and Human Services
LB199	Judiciary
LB200	Transportation and Telecommunications
LB201	Judiciary
LB202	Transportation and Telecommunications
LB203	Judiciary
LB204	Transportation and Telecommunications
LB205	Nebraska Retirement Systems
LB206	Education
LB207	Government, Military and Veterans Affairs

Marshall, William, III - Nebraska State Fair Board - Agriculture

The Executive Board referred the University of Nebraska at Kearney's request to issue revenue bonds to the Appropriations Committee for further consideration.

(Signed) John Wightman, Chairperson
Executive Board

ANNOUNCEMENT

The Agriculture Committee elected Senator Dubas as Vice Chairperson.

The Urban Affairs Committee elected Senator McGill as Vice Chairperson.

NOTICE OF COMMITTEE HEARINGS

Revenue

Room 1524

Wednesday, January 21, 2009 1:30 p.m.

LB164

LB165

LB166

(Signed) Abbie Cornett, Chairperson

Natural Resources

Room 1525

Wednesday, January 21, 2009 1:30 p.m.

LB105

LB179

LB180

LB42

LB43

Thursday, January 22, 2009 1:30 p.m.

Dunnigan, Brian - Director, Department of Natural Resources

Fisher, Rex - Game and Parks Commission

LB53

LB14

LB5

Friday, January 23, 2009 1:30 p.m.

LB134

LB160

(Signed) Chris Langemeier, Chairperson

Government, Military and Veterans Affairs

Room 1507

Wednesday, January 21, 2009 2:00 p.m.

LB115

LB154

LB139

Thursday, January 22, 2009 2:00 p.m.

LB24

LB17

LB52

(Signed) Bill Avery, Chairperson

BILLS ON FIRST READING

The following bills were read for the first time by title:

LEGISLATIVE BILL 245. Introduced by Dubas, 34.

A BILL FOR AN ACT relating to railroads; to amend sections 74-1310 and 74-1323, Reissue Revised Statutes of Nebraska, and section 75-109.01, Revised Statutes Cumulative Supplement, 2008; to provide a penalty and procedure for unlawful obstruction of railroad crossings; to change and provide powers and duties; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 246. Introduced by Dubas, 34.

A BILL FOR AN ACT relating to biotechnology; to amend section 66-1701, Reissue Revised Statutes of Nebraska; to reestablish the Biopower Steering Committee; to provide for a study; to state intent regarding appropriations; to provide a termination date; and to repeal the original section.

LEGISLATIVE BILL 247. Introduced by Dubas, 34.

A BILL FOR AN ACT relating to health and human services; to state findings; to define a term; to require accreditation of the Division of Children and Family Services as provided; to require a plan; and to provide for appropriation of funds.

LEGISLATIVE BILL 248. Introduced by Dubas, 34; Cornett, 45.

A BILL FOR AN ACT relating to relating to income tax; to amend section

77-2715.07, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to income tax credits; to provide an operative date; and to repeal the original section.

LEGISLATIVE BILL 249. Introduced by Fulton, 29; Karpisek, 32.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2703 and 77-2708, Revised Statutes Cumulative Supplement, 2008; to change the sales and use tax collection fees; and to repeal the original sections.

LEGISLATIVE BILL 250. Introduced by Gloor, 35; Janssen, 15.

A BILL FOR AN ACT relating to physician assistants; to amend sections 38-2008, 38-2014, 38-2015, 38-2017, 38-2018, 38-2037, 38-2047, 38-2049, 38-2050, 38-2051, and 38-2055, Reissue Revised Statutes of Nebraska; to change and repeal definitions; to change provisions relating to supervision and practice of physician assistants; to change powers and duties of supervising physicians, the Board of Medicine and Surgery, and the Department of Health and Human Services; to harmonize provisions; to repeal the original sections; and to outright repeal section 38-2009, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 251. Introduced by Cornett, 45.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 49-801.01, Revised Statutes Cumulative Supplement, 2008; to update references to the Internal Revenue Code of 1986; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 252. Introduced by Cornett, 45.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-101, 28-1006, 28-1007, and 28-1019, Reissue Revised Statutes of Nebraska; to prohibit the possession of animal fighting paraphernalia; to provide a penalty; to provide for seizure of property; to provide for applicability; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 253. Introduced by Ashford, 20.

A BILL FOR AN ACT relating to children; to amend sections 23-1201, 24-313, 24-519, 25-1901, 25-2728, 25-2908, 28-377, 28-718, 28-719, 28-720, 28-720.01, 28-721, 28-722, 28-723, 28-724, 28-725, 28-726, 28-727, 28-728, 28-729, 28-730, 28-731, 28-732, 29-401, 29-1816, 29-1926, 29-2246, 29-2252.01, 29-2258, 29-2260, 29-2260.01, 29-3918, 29-4304, 30-2614, 42-364, 42-371, 43-101, 43-104, 43-104.08, 43-104.11, 43-106.01, 43-107, 43-296, 43-2,108, 43-2,109, 43-2,110, 43-2,113, 43-2,125, 43-413, 43-512, 43-512.03, 43-903, 43-1002, 43-1230, 43-1303, 43-1304, 43-1307, 43-1308, 43-1309, 43-1310, 43-1314.01, 43-1314.02,

43-1321, 43-2922, 43-2932, 43-2939, 43-3502, 43-3709, 43-3710, 71-3404, 71-3407, 79-215, 81-3126, 83-108.04, and 83-170, Reissue Revised Statutes of Nebraska, and sections 71-448, 71-1919, 71-6039, 71-6039.01, 71-6039.03, 71-6039.05, 71-6502, and 71-6906, Revised Statutes Cumulative Supplement, 2008; to transfer or repeal provisions of the Nebraska Juvenile Code and adopt a new Nebraska Juvenile Code; to change and eliminate child abuse reporting and registry provisions; to provide child relinquishment provisions; to change and eliminate provisions of and rename the Foster Care Review Act; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide an operative date; to repeal the original sections; and to outright repeal sections 28-710, 28-711, 28-713, 28-713.01, 28-714, 28-715, 28-716, 28-717, 28-733, 43-245, 43-246, 43-247, 43-247.01, 43-248, 43-248.01, 43-249, 43-250, 43-251, 43-251.01, 43-252, 43-253, 43-254, 43-254.01, 43-254.02, 43-255, 43-256, 43-257, 43-258, 43-259, 43-260, 43-260.01, 43-260.02, 43-260.03, 43-260.04, 43-260.05, 43-260.06, 43-260.07, 43-262, 43-263, 43-264, 43-265, 43-266, 43-267, 43-268, 43-269, 43-270, 43-271, 43-272, 43-272.01, 43-272.02, 43-273, 43-274, 43-275, 43-276, 43-277, 43-278, 43-279, 43-279.01, 43-280, 43-281, 43-282, 43-283, 43-283.01, 43-284, 43-284.01, 43-284.02, 43-285, 43-286, 43-287.01, 43-287.02, 43-287.03, 43-287.04, 43-287.05, 43-287.06, 43-288, 43-289, 43-290, 43-291, 43-292, 43-292.01, 43-292.02, 43-292.03, 43-293, 43-294, 43-295, 43-297, 43-298, 43-299, 43-2,100, 43-2,101, 43-2,102, 43-2,103, 43-2,104, 43-2,105, 43-2,106, 43-2,106.01, 43-2,106.02, 43-2,106.03, 43-2,107, 43-2,123.01, 43-2,128, 43-2,129, 43-408, 43-903, 43-905, 43-1301, 43-1301.01, 43-1311, 43-1312, 43-1313, 43-1314, 43-1315, 43-1316, and 43-1318, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 254. Introduced by Dubas, 34.

A BILL FOR AN ACT relating to agriculture; to amend sections 2-2622, 2-2626, and 2-2646, Reissue Revised Statutes of Nebraska; to require Nebraska aerial pesticide business licenses for aerial pesticide application; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 255. Introduced by Harms, 48; Howard, 9.

A BILL FOR AN ACT relating to school buses; to amend sections 79-601 and 79-609, Reissue Revised Statutes of Nebraska; to require lap-shoulder belts as prescribed; to require instruction regarding use of certain belts; to require the use of certain belts; to state intent regarding liability; and to repeal the original sections.

LEGISLATIVE BILL 256. Introduced by Harms, 48.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to the Game and Parks Commission; and to declare an emergency.

LEGISLATIVE BILL 257. Introduced by Harms, 48.

A BILL FOR AN ACT relating to public schools; to repeal the Seamless Delivery System Pilot Project; and to outright repeal sections 79-11,136, 79-11,137, 79-11,138, 79-11,139, 79-11,140, and 79-11,141, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 258. Introduced by Harms, 48.

A BILL FOR AN ACT relating to the Nebraska Liquor Control Act; to amend section 53-180.05, Reissue Revised Statutes of Nebraska, and section 53-101, Revised Statutes Cumulative Supplement, 2008; to change and provide penalties for minors in possession of alcoholic liquor; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 259. Introduced by Utter, 33.

A BILL FOR AN ACT relating to deposit and investment of public funds; to amend sections 2-4214, 14-556, 15-847, 15-849, 16-713, 16-715, 17-607, 17-720, 77-2305, 77-2318, 77-2326.04, 77-2340, 77-2344, 77-2345, 77-2352, 77-2355, 77-2362, 77-2375, 77-2385, 77-2388, 77-2389, 77-2395, 77-2398, 77-23,100, 77-23,101, 77-23,102, and 77-23,105, Reissue Revised Statutes of Nebraska, and sections 77-2365.02 and 77-2387, Revised Statutes Cumulative Supplement, 2008; to clarify Federal Deposit Insurance Corporation coverage; to harmonize provisions; to provide a duty for the Revisor of Statutes; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 260. Introduced by Rogert, 16; McGill, 26.

A BILL FOR AN ACT relating to civil actions; to adopt the Nebraska Claims for Wrongful Conviction and Imprisonment Act.

LEGISLATIVE BILL 261. Introduced by Rogert, 16.

A BILL FOR AN ACT relating to the Motor Vehicle Operator's License Act; to amend section 60-4,111.01, Reissue Revised Statutes of Nebraska; to provide for use of machine-readable information encoded on an operator's license or a state identification card; to provide penalties; and to repeal the original section.

LEGISLATIVE BILL 262. Introduced by Rogert, 16.

A BILL FOR AN ACT relating to alcoholic liquor sales; to amend sections 9-647 and 53-179, Reissue Revised Statutes of Nebraska; to change provisions relating to time for sales of alcoholic liquor and conduct of lotteries under the Nebraska County and City Lottery Act; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 263. Introduced by Rogert, 16.

A BILL FOR AN ACT relating to agriculture; to amend sections 81-2,147 and 81-2,162.22, Reissue Revised Statutes of Nebraska; to provide that state law preempts local law for the Nebraska Seed Law and the Nebraska Commercial Fertilizer and Soil Conditioner Act; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 264. Introduced by Fischer, 43.

A BILL FOR AN ACT relating to the motor fuel tax; to amend section 66-489.02, Revised Statutes Cumulative Supplement, 2008; to change fuel tax calculations; to repeal the original section; and to declare an emergency.

LEGISLATIVE BILL 265. Introduced by Giese, 17.

A BILL FOR AN ACT relating to the Sexual Predator Residency Restriction Act; to amend sections 29-4016 and 29-4017, Reissue Revised Statutes of Nebraska; to authorize certain residency restrictions near parks; and to repeal the original sections.

LEGISLATIVE BILL 266. Introduced by Karpisek, 32; Fischer, 43.

A BILL FOR AN ACT relating to gaming; to amend sections 2-1201, 2-1201.01, 2-1202, 2-1203, 2-1203.01, 2-1204, 2-1205, 2-1206, 2-1209, 2-1213, and 2-1219, Reissue Revised Statutes of Nebraska; to adopt the Racetrack Gaming Act; to provide for regulation of racetrack gaming; to create funds; to provide civil penalties; to change provisions relating to the State Racing Commission and horseracing; to harmonize provisions; to provide severability; and to repeal the original sections.

LEGISLATIVE BILL 267. Introduced by Lathrop, 12.

A BILL FOR AN ACT relating to state employees; to prohibit mandatory overtime for certain employees as prescribed.

LEGISLATIVE BILL 268. Introduced by Lathrop, 12.

A BILL FOR AN ACT relating to the Child Care Licensing Act; to amend section 71-1908, Revised Statutes Cumulative Supplement, 2008; to require liability insurance as prescribed; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 269. Introduced by Heidemann, 1.

A BILL FOR AN ACT relating to state funds; to amend sections 71-7608, 71-7611, and 71-8805, Revised Statutes Cumulative Supplement, 2008; to change and provide for transfers of funds; to harmonize provisions; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 270. Introduced by Haar, 21.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-3501, 77-3506.03, 77-3509.01, 77-3509.02, 77-3509.03, 77-3510, 77-3511, 77-3512, 77-3516, 77-3521, 77-3522, 77-3523, and 77-3529, Reissue Revised Statutes of Nebraska, and sections 77-3506.02, 77-3513, 77-3514, and 77-4212, Revised Statutes Cumulative Supplement, 2008; to create a homestead exemption; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 271. Introduced by Haar, 21; Nantkes, 46.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 79-1018.01, Reissue Revised Statutes of Nebraska, and section 60-3,186, Revised Statutes Cumulative Supplement, 2008; to adopt the Car Tax Reduction Act; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 272. Introduced by Friend, 10.

A BILL FOR AN ACT relating to the statewide one-call notification system; to amend section 76-2317, Reissue Revised Statutes of Nebraska; to redefine the term underground facility; and to repeal the original section.

LEGISLATIVE BILL 273. Introduced by Ashford, 20.

A BILL FOR AN ACT relating to law enforcement; to amend sections 33-117 and 83-424, Reissue Revised Statutes of Nebraska, and section 69-2404, Revised Statutes Cumulative Supplement, 2008; to change sheriff's fees and handgun certificate fees; to provide an operative date; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 274. Introduced by Christensen, 44.

A BILL FOR AN ACT relating to incarceration work camps; to amend sections 83-4,142 and 83-4,143, Reissue Revised Statutes of Nebraska; to provide powers for the Director of Correctional Services; and to repeal the original sections.

LEGISLATIVE BILL 275. Introduced by McGill, 26; Ashford, 20; Pankonin, 2; Stuthman, 22; Wallman, 30.

A BILL FOR AN ACT relating to behavioral health; to amend sections 71-806, 71-809, and 71-810, Revised Statutes Cumulative Supplement, 2008; to provide for crisis, information, and referral services as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

LEGISLATIVE BILL 276. Introduced by Nordquist, 7; Ashford, 20;

Cornett, 45; Giese, 17; McGill, 26; Mello, 5; Nantkes, 46.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-101 and 28-519, Reissue Revised Statutes of Nebraska; to change provisions and penalties relating to criminal mischief; to prohibit defacement as prescribed; to provide penalties; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 277. Introduced by Mello, 5; Cornett, 45; Giese, 17; Nantkes, 46; Nordquist, 7.

A BILL FOR AN ACT relating to the Nebraska Criminal Code; to amend section 28-101, Reissue Revised Statutes of Nebraska; to provide requirements, violations, and penalties for the purchase of spray paint and industrial-strength marking pens by a minor; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 278. Introduced by Mello, 5; Cornett, 45; Lathrop, 12; Nantkes, 46; Nordquist, 7; Rogert, 16.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to amend section 60-6,157, Reissue Revised Statutes of Nebraska; to permit municipalities to allow pedestrians to solicit contributions on roadways as prescribed; to harmonize provisions; and to repeal the original section.

LEGISLATIVE BILL 279. Introduced by Avery, 28; Cornett, 45; Price, 3; Rogert, 16.

A BILL FOR AN ACT relating to land-use planning; to amend sections 14-407, 15-1103, and 19-923, Reissue Revised Statutes of Nebraska; to require notification of military installations regarding development of real property; and to repeal the original sections.

LEGISLATIVE BILL 280. Introduced by Avery, 28; Cornett, 45; Price, 3; Rogert, 16.

A BILL FOR AN ACT relating to military bases; to create the Commission on Military Affairs; and to provide for membership, terms, expenses, and powers and duties.

LEGISLATIVE BILL 281. Introduced by Mello, 5; Cornett, 45.

A BILL FOR AN ACT relating to educational service units; to amend sections 32-515, 79-1212, 79-1217, and 79-1217.01, Reissue Revised Statutes of Nebraska; to change provisions relating to membership on certain reorganized boards as prescribed; to harmonize provisions; and to repeal the original sections.

LEGISLATIVE BILL 282. Introduced by Mello, 5; Nantkes, 46.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2715.07, 77-2717, and 77-2734.03, Revised Statutes Cumulative Supplement, 2008; to adopt the Nebraska Advantage Film Production Incentive Act; to provide income tax incentives for film production; to harmonize provisions; to provide an operative date; and to repeal the original sections.

LEGISLATIVE BILL 283. Introduced by Cornett, 45.

A BILL FOR AN ACT relating to community colleges; to amend sections 85-1503 and 85-2224, Reissue Revised Statutes of Nebraska; to redefine terms; to change provisions relating to calculations under the Community College Foundation and Equalization Aid Act; and to repeal the original sections.

LEGISLATIVE BILL 284. Introduced by Fulton, 29; Friend, 10; Hansen, 42; McCoy, 39; Schilz, 47.

A BILL FOR AN ACT relating to the Sexual Predator Residency Restriction Act; to amend sections 29-4015, 29-4016, and 29-4017, Reissue Revised Statutes of Nebraska; to rename the act; to authorize certain employment restrictions; and to repeal the original sections.

LEGISLATIVE BILL 285. Introduced by Pirsch, 4; Cornett, 45; Flood, 19; Friend, 10; Fulton, 29; Gay, 14; Schilz, 47.

A BILL FOR AN ACT relating to criminal procedure; to amend sections 29-2264, 29-4001, 29-4003, 29-4004, 29-4005, 29-4006, 29-4007, 29-4009, 29-4011, 29-4013, 29-4016, and 83-174.03, Reissue Revised Statutes of Nebraska; to change and eliminate provisions relating to the Sex Offender Registration Act; to harmonize provisions; to provide an operative date; to repeal the original sections; and to outright repeal section 29-4010, Reissue Revised Statutes of Nebraska.

LEGISLATIVE BILL 286. Introduced by General Affairs Committee: Karpisek, 32, Chairperson; Coash, 27; Cook, 13; Dierks, 40; Friend, 10; Price, 3; Rogert, 16.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 9-812, Reissue Revised Statutes of Nebraska; to change provisions relating to lottery funds; to repeal the original section; to provide an operative date; and to declare an emergency.

LEGISLATIVE BILL 287. Introduced by General Affairs Committee: Karpisek, 32, Chairperson; Coash, 27; Cook, 13; Dierks, 40; Friend, 10; Price, 3; Rogert, 16.

A BILL FOR AN ACT relating to gambling; to amend sections 9-255.04,

9-347, and 9-347.01, Reissue Revised Statutes of Nebraska; to change provisions relating to the definite profit of pickle cards; to harmonize provisions; and to repeal the original sections.

RESOLUTION

LEGISLATIVE RESOLUTION 6CA. Introduced by Karpisek, 32; Fischer, 43.

THE MEMBERS OF THE ONE HUNDRED FIRST LEGISLATURE OF NEBRASKA, FIRST SESSION, RESOLVE THAT:

Section 1. At the general election in November 2010 the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To amend Article III, section 24:

III-24 (1) Except as provided in this section, the Legislature shall not authorize any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time.

(2) The Legislature may authorize and regulate a state lottery pursuant to subsection (3) of this section and other lotteries, raffles, and gift enterprises which are intended solely as business promotions or the proceeds of which are to be used solely for charitable or community betterment purposes without profit to the promoter of such lotteries, raffles, or gift enterprises.

(3)(a) The Legislature may establish a lottery to be operated and regulated by the State of Nebraska. The proceeds of the lottery shall be appropriated by the Legislature for the costs of establishing and maintaining the lottery and for the following purposes, as directed by the Legislature:

(i) The first five hundred thousand dollars after the payment of prizes and operating expenses shall be transferred to the Compulsive Gamblers Assistance Fund;

(ii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;

(iii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be used for education as the Legislature may direct;

(iv) Ten percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to ten percent of the funds available for transfer. Such matching funds may be obtained from the city and any other private or public entity, except that no portion of such matching funds shall be provided by the state. If the Nebraska State Fair ceases operations, ten

percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the General Fund; and

(v) One percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Compulsive Gamblers Assistance Fund.

(b) No lottery game shall be conducted as part of the lottery unless the type of game has been approved by a majority of the members of the Legislature.

(4) Nothing in this section shall be construed to prohibit (a) the enactment of laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure or (b) the enactment of laws providing for the licensing and regulation of bingo games conducted by nonprofit associations which have been in existence for a period of five years immediately preceding the application for license, except that bingo games cannot be conducted by agents or lessees of such associations on a percentage basis.

(5)(a) Racetrack gaming limited to a total of three thousand five hundred gaming devices, allocated to no more than seven racetrack facilities licensed to conduct such gaming, shall be permitted subject to prior approval or rejection by the governing body of the political subdivision within which the racetrack is located. The licensing, administration, regulation, and financial monitoring of racetrack facilities conducting racetrack gaming and the allocation of gaming devices among racetracks conducting racetrack gaming shall be the duty and responsibility of the State Racing Commission.

(b) For purposes of this subsection:

(i) Gross gaming revenue means all cash or other consideration utilized to play player-activated electronic or video gaming devices operated at a racetrack facility, less all cash or other consideration paid out to winning players as prizes;

(ii) Racetrack facility means a licensed racetrack which conducts wagering by the parimutuel method on thoroughbred horseracing; and

(iii) Racetrack gaming means games of chance played for money, credit, or any representation of value using player-activated electronic or video gaming devices at a racetrack facility.

(c) Racetrack facilities shall remit gross gaming revenue to the commission for credit to the Gaming Revenue Cash Fund. The Legislature shall appropriate the Gaming Revenue Cash Fund for the following purposes, and the fund shall be allocated by the commission as follows:

(i) Forty percent shall be allocated to the State Treasurer. The State Treasurer shall credit such money to the Highway Trust Fund;

(ii) Two percent shall be allocated to the Gaming Administration Cash Fund, which fund shall be used solely for administrative expenses incurred by the commission in the performance of its responsibilities in regard to racetrack gaming;

(iii) Thirty-nine percent shall be allocated to the racetrack gaming licensees for establishing, equipping, operating, and maintaining their

respective racetrack gaming operations and for accounting and security expenses, including the licensees' payment of obligations to contractors who provide some or all of those services;

(iv) One percent shall be allocated to the State Treasurer. The State Treasurer shall credit such money to the Compulsive Gamblers Assistance Fund or, if it ceases to operate, to a comparable gamblers assistance fund established under state authority;

(v) Four percent shall be allocated to the political subdivisions which approve racetrack gaming within their jurisdictions;

(vi) Ten percent shall be allocated to racetrack facilities for the sole purpose of supplementing purses at live thoroughbred races;

(vii) Two percent shall be allocated to entities approved by the commission for the development and improvement of the thoroughbred breeding industry in Nebraska; and

(viii) Two percent shall be allocated to entities approved by the commission for the development and improvement of the following equine activities in Nebraska: The quarterhorse industry; large-animal veterinary medicine; and equine therapy.

(d) Amounts remaining at the end of a biennium in the Gaming Revenue Cash Fund or the Gaming Administration Cash Fund shall be reappropriated for the uses described in this subsection.

(e) The commission shall require at least annual auditing by one or more independent auditors approved by the commission of all expenditures by each distributee to ensure that the funds are used only for the purposes described in this subsection and in a manner consistent with the rules and regulations of the commission.

(f) Nothing in this Constitution shall be construed to prohibit the Legislature from enacting legislation to facilitate the implementation of this subsection.

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

A constitutional amendment to permit racetrack gaming limited to a total of three thousand five hundred gaming devices at thoroughbred racetrack facilities, to provide for licensing, administration, regulation, and financial monitoring of racetrack gaming by the State Racing Commission, and to allocate gaming revenue.

For

Against.

Referred to the Reference Committee.

NOTICE OF COMMITTEE HEARINGS
Revenue

Room 1524

Thursday, January 22, 2009 1:30 p.m.

LB119
LB120
LB89

(Signed) Abbie Cornett, Chairperson

Health and Human Services

Room 1510

Wednesday, January 21, 2009 1:30 p.m.

LB25
LB91
LB173
LB196

Thursday, January 22, 2009 1:30 p.m.

LB68
LB84

Friday, January 23, 2009 1:30 p.m.

LB146
LB132
LB150
LB195

(Signed) Tim Gay, Chairperson

Judiciary

Room 1113

Wednesday, January 21, 2009 1:30 p.m.

LB151
LB123
LB76
LB148

(Signed) Brad Ashford, Chairperson

COMMUNICATION

Received communication to Patrick J. O'Donnell, Clerk, from Joann Schaefer MD, Chief Medical Officer, Director, Division of Public Health, Department of Health and Human Services, regarding the appointments of the following four scientists to the Stem Cell Research Advisory Committee:

Rebecca Morris Ph.D.
Dennis R. Roop Ph.D.
Bradley B. Keller MD
Gerald Spangrude Ph.D.

UNANIMOUS CONSENT - Add Cointroducers

Senator Ashford asked unanimous consent to add his name as cointroducer to LR2. No objections. So ordered.

Senators Mello and Nordquist asked unanimous consent to add their names as cointroducers to LB69 and LB70. No objections. So ordered.

Senator Giese asked unanimous consent to add his name as cointroducer to LB123. No objections. So ordered.

Senator Nordquist asked unanimous consent to add his name as cointroducer to LB140 and LB206. No objections. So ordered.

Senator Pirsch asked unanimous consent to add his name as cointroducer to LB149. No objections. So ordered.

ATTORNEY GENERAL'S OPINION

Opinion 09001

SUBJECT: Authority of local political subdivisions to prohibit the carrying of concealed handguns by permit holders under the Concealed Handgun Permit Act

REQUESTED BY: Senator Mark R. Christensen
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Charles E. Lowe, Assistant Attorney General

Introduction

In a letter to this office dated November 21, 2008, you have indicated that you are considering introducing legislation to address some questions which have arisen regarding the authority of local political subdivisions to "exempt" themselves from provisions of the Concealed Handgun Permit Act, Neb. Rev. Stat. §§ 69-2427 through 69-2447 (Cum. Supp. 2006 and Supp. 2007) (sometimes referred to herein as "the act"). The act was passed by the Legislature during its session in 2006 and went into effect on January 1, 2007.

Generally speaking, the Concealed Handgun Permit Act is designed so that citizens of Nebraska who meet certain training and other requirements may obtain permits allowing them to carry concealed handguns throughout the state except for certain specific locations and/or in certain specific situations. §§ 69-2428, 69-2433, 69-2432, 69-2433(10), 69-2436(1), 69-2441(1)(a). The act also sets forth regulatory measures relating to the carrying of concealed handguns by permitholders and provides penalties for violations of the act. §§ 69-2430 through 69-2432, 69-2435, 69-2439, 69-2440, 69-2442 and 69-2443. The Nebraska State Patrol, as called for by the act, has issued rules and regulations intended to implement the law. §§ 69-2432(1), 69-2446; 272 NAC ch. 21.

It is in this context that you ask for this office's legal opinion on three questions relating to the Concealed Handgun Permit Act and local political subdivisions, which we paraphrase as follows:

1. Does the language of the act preempt the authority of local political subdivisions to ban by ordinance the carrying of concealed handguns by permitholders within their jurisdictions?
2. Does the provision found in § 69-2441(1)(a) of the act that prohibits even permitholders from carrying concealed handguns "into or onto any other place or premises where handguns are prohibited by law, rule or regulation" grant local political subdivisions the authority to ban the lawful carrying of concealed handguns by permitholders?
3. Does the provision found in § 69-2441(1)(a) of the act that prohibits even permitholders from carrying concealed handguns "into or onto any other place or premises where handguns are prohibited by law, rule or regulation" mean that permitholders may not carry concealed handguns in a location "where the simple possession, let alone the carrying of a handgun, is otherwise prohibited?"

We will discuss each of your inquiries in the following section of this opinion.¹

Discussion

I.

Preemption of Local Ordinances

Section 69-2436 of the Concealed Handgun Permit Act states unequivocally: "A permit to carry a concealed handgun is valid throughout the state for a period of five years after the date of issuance." (Emphasis supplied.) Section 69-2441(1)(a) also states that "[a] permitholder may carry a concealed handgun anywhere in Nebraska" except in locations further described in that section. (Emphasis supplied.)

Although the act, thus, purports to allow a permitholder to carry a concealed handgun anywhere in Nebraska, the act goes on to list a number of exceptions – i.e., locations and situations in which even a permitholder may not carry a concealed handgun. These exceptions are contained in § 69-2441(1)(a) of the act, which reads in its entirety as follows:

A permitholder may carry a concealed handgun anywhere in Nebraska, except any: Police, sheriff, or Nebraska State Patrol station or office; detention facility, prison, or jail; courtroom or building which contains a courtroom; polling place during a bona fide election; meeting of the governing body of a county, public school district, municipality, or other political subdivision; meeting of the Legislature or a committee of the Legislature; financial institution; professional or semiprofessional athletic event; building, grounds, vehicle, or sponsored activity or athletic event of any public, private, denominational, or parochial school or private or public university, college, or community college; place of worship; hospital, emergency room, or trauma center; political rally or fundraiser; establishment having a license issued under the Nebraska Liquor Control Act that derives over one-half of its total income from the sale of alcoholic liquor; place where the possession or carrying of a firearm is prohibited by state or federal law; a place or premises where the person, persons, entity, or entities in control of the property or employer in control of the property has prohibited permitholders from carrying concealed handguns into or onto the place or premises; or into or onto any other place or premises where handguns are prohibited by law or rule or regulation.

While the Concealed Handgun Permit Act speaks in terms of allowing permitholders to carry concealed handguns "anywhere in Nebraska," there are also Nebraska statutes which permit all cities and villages in the state - metropolitan class, primary class, first class, second class and village - to prohibit or prevent the carrying of concealed weapons within their jurisdictions. Neb. Rev. Stat. §§ 14-102(6), 15-255, 16-227 and 17-556 (2007). These statutes were not expressly repealed by the act. Therefore, the question arises as to whether the cities and villages may continue, under the foregoing statutes, to enact or enforce ordinances prohibiting the carrying of concealed handguns, at least as they may apply to permitholders under the act. Specifically, you ask if any such ordinances are preempted by the act.

As stated in State ex rel. City of Alma v. Furnas County Farms, 266 Neb.

558, 567, 667 N.W.2d 512, 521 (2003):

Preemption of municipal ordinances by state law is based on the fundamental principle that "municipal ordinances are inferior in status and subordinate to the laws of the state." 5 Eugene McQuillin, *The Law of Municipal Corporations* § 15.20 at 106 (3d ed. 1996)). Thus, "[w]here there is a direct conflict between a city ordinance and a state statute, the statute is the superior law." *Herman v. Lee*, 210 Neb. 563, 567, 316 N.W.2d 56, 59 (1982) (quoting *Arrow Club, Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 131 N.W.2d 134 (1964).

There are three circumstances in which a municipal ordinance may be preempted by state law. "First, the Legislature may expressly declare in explicit statutory language its intent to preempt municipal ordinances." *State ex rel. City of Alma*, 266 Neb. at 568, 667 N.W.2d at 522. That has, obviously, not been done in the present situation. Nothing in the Concealed Handgun Permit Act expresses an explicit intent to preempt city ordinances prohibiting the carrying of concealed handguns by permitholders.

"Second, in the absence of explicit statutory language, the Legislature's intent to preempt municipal ordinances may be inferred from a comprehensive scheme of legislation." This type of preemption is sometimes called "field preemption." *State ex rel. City of Alma*, 266 Neb. at 568, 667 N.W.2d at 522. Quoting extensively from 5 Eugene McQuillin, *The Law of Municipal Corporations* § 15.20 at 107-08 (3d ed. 1996), the *City of Alma* court described field preemption as follows:

[A]n intent by the state to preempt an entire field of legislation need not be expressly declared. Preemption may be implied from the nature of the subject matter being regulated and the purpose and scope of the state statutory scheme...

[A]n ordinance may cover an authorized field of local laws not occupied by general laws, or may complement a field not exclusively occupied by the general laws. However, where the state has occupied the field of prohibitory legislation on a particular subject, a municipality lacks authority to legislate with respect to it.

State ex rel. City of Alma, 266 Neb. at 568-69, 667 N.W.2d at 522. (Emphasis supplied.)

In the present situation the Legislature appears to have occupied the entire field with regard to the carrying of concealed handguns. On that subject, the Concealed Handgun Permit Act has set forth the overall policy of the state when it comes to the carrying of concealed handguns and the licensing of persons to do so and has set forth a comprehensive regulatory scheme for implementing that policy. Therefore, cities and villages lack authority to legislate for themselves with respect to this subject. This is true even for cities operating under a home rule charter.

It is well established that under a home rule charter, a city's power must be consistent with and subject to the constitution and laws of this state, except as to local matters of strictly municipal concern. . . . The constitutional limitation that a home rule charter must be consistent with and subject to the laws of the state [Neb. Const. art. XI, § 2] . . . means that on matters of such general concern to the people of the state as to involve a public need or policy, the charter must yield to state legislation.

Home Builders Assn. of Lincoln v. City of Lincoln, 271 Neb. 353, 360, 711 N.W.2d 871, 877-78 (2006).

Under the third circumstance calling for preemption "a municipal ordinance is preempted to the extent that it actually conflicts with state law." *State ex rel. City of Alma*, 266 Neb. at 569, 667 N.W.2d at 522. Moreover, "[t]he fact that a local ordinance does not expressly conflict with the statute will not save it when the legislative purpose in enacting the statute is frustrated by the ordinance." *Id.* (quoting, 5 Eugene McQuillin, *The Law of Municipal Corporations* § 15.20 at 107).

Any city or village ordinance prohibiting the carrying of concealed handguns by permitholders would conflict directly with the provisions of the Concealed Handgun Permit Act which authorize permitholders to carry concealed handguns throughout the state and "anywhere in Nebraska" except in certain specified locations and circumstances. There does not appear to be any reasonable construction of the terms "throughout the state" and "anywhere in Nebraska" that would somehow exempt all the cities and villages in the state that have enacted or may enact ordinances prohibiting concealed handguns from their reach. The relatively recently-enacted Concealed Handgun Permit Act and the pre-existing statutes authorizing cities and villages to prohibit concealed weapons are necessarily repugnant to each other, at least insofar as concealed handguns carried by permitholders under the act are concerned. Thus, any ordinances prohibiting the carrying of concealed weapons, at least to the extent they may be interpreted as applying to permitholders under the act, are necessarily in conflict with the provisions of the act and would frustrate the purpose of the Legislature in enacting that law. "That which is allowed by the general laws of the state cannot be prohibited by ordinance, without express grant on the part of the state." *State ex rel. City of Alma*, 266 Neb. at 569, 667 N.W.2d at 522 (quoting, 5 Eugene McQuillin, *The Law of Municipal Corporations* § 15.20 at 107). There is no "express grant" from the state permitting cities and villages to prohibit the carrying of concealed handguns by permitholders.

This court [the Nebraska Supreme Court] has stated that "[a] city ordinance is inconsistent with a statute if it is contradictory in a sense that the two legislative provisions cannot coexist Generally, an ordinance cannot prohibit what the Legislature has expressly licensed,

authorized, or permitted." *Herman v. Lee*, 210 Neb. 563, 567, 316 N.W.2d 56, 59 (1982) (quoting *Arrow Club Inc. v. Nebraska Liquor Control Commission*, 177 Neb. 686, 131 N.W.2d 134 (1964).

State ex rel. *City of Alma*, 266 Neb. at 569, 667 N.W.2d at 522-23.

Accordingly, it appears that a city or village cannot have or enforce an ordinance which effectively prohibits the carrying of concealed handguns by permitholders everywhere within its jurisdiction.² The answer to your first question is in the affirmative. It appears that there has been preemption.

II.

Exception for Place or Premises Where Handguns Prohibited by Law

Turning to your second inquiry, you ask if the exception contained in § 69-2442(1)(a) of the Concealed Handgun Permit Act prohibiting permitholders from carrying concealed handguns where handguns are prohibited by law, rule or regulation grants cities and villages the authority to ban the lawful carrying of concealed handguns by a permitholders. That exception, when read in context of the entire section, states: "A permitholder may carry a concealed handgun anywhere in Nebraska, except . . . into on onto any other place or premises where handguns are prohibited by law or rule or regulation." (Emphasis supplied.)

There are, however, at least two reasons why this exception is not likely sufficient to allow cities and villages to prohibit the carrying of concealed handguns.

"Place or Premises"

First, there is a question as to whether or not the term "other place or premises" is broad enough to encompass the entirety of a city's or village's geographical boundaries. In other words, did the Legislature intend the term "place or premises" to mean an entire city or village, or did it have a more limited concept of a "place or premises?"

One hint that this exception was not intended to include an entire, city or village is the fact that all of the other "places or premises" mentioned in the exceptions in § 69-2442(1)(a) seem to be limited locales, such as some buildings, bars, sports venues, private property and the locations of public meetings and the like. Nothing in any of these other exceptions suggests that the Legislature intended to limit its statement that a "permitholder may carry a concealed handgun anywhere in Nebraska" to such a degree that entire cities and villages could be deemed off-limits to concealed handguns.

As stated in *Dykes v. Scotts Bluff County Agricultural Society, Inc.*, 260 Neb. 375, 380, 617 N.W.2d 817, 822 (2000):

Under the "ejusdem generis" canon of construction, "when a general word or phrase follows a list of specific persons or things, the general word or phrase will be interpreted to include only persons or things of the same type as those listed." Black's Law Dictionary 535 (7th ed. 1999). Thus, under the ejusdem generis rule, specific words or terms modify and restrict the interpretation of general words or terms where both are used in sequence.

Applying the "ejusdem generis" rule to the last exception set forth in § 69-2442(1)(a) of the act, it would appear that the broad term "any other place or premises" would be restricted to the types of places or premises listed specifically in the other exceptions contained in that section; and these other types of places or premises are not broad enough to encompass entire cities and villages.

Additionally, it is worth noting that one of the listed exceptions specifically states that concealed handguns may not be carried by permitholders at any "place where the possession or carrying of a firearm is prohibited by state or federal law." Had the Legislature intended to include city or village ordinances prohibiting the carrying of concealed weapons within the exceptions, it could easily have simply referred to such ordinances at such point as being included within this particular exception. It did not do so.

On the other hand, it is well-established that words used in statutes are to be given their ordinary meaning as would be understood by the average reasonable person. "The purpose and intent of the Legislature must be ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense." State ex rel. City of Alma, 266 Neb. at 568, 667 N.W.2d at 521. The word "place," in one of its dictionary definitions, is said to be "a city, town or village." Webster's New Universal Unabridged Dictionary (2d ed. 1983) at 1370. Therefore, by using the word "place" in the last exception, the Legislature may have meant that an entire city or village could be off-limits to concealed handguns. As discussed below, however, we do not think the exception can be given such an interpretation.

"Where Handguns Are Prohibited"

The second, and primary, reason why the exception cannot be deemed to allow cities and villages to prohibit the carrying of concealed handguns throughout their territories arises from the fact that the exception bars the carrying of concealed handguns "into on onto any other place or premises where handguns are prohibited by law or rule or regulation." (Emphasis supplied.) It is important to note that the exception says that concealed handguns may not be carried "where handguns are prohibited" altogether. It does not say that concealed handguns may not be carried by permitholders where only concealed handguns are barred. This is a very important distinction in this context because the statutes under which cities and villages have acted or may act to prohibit the carrying of concealed

handguns only give the cities the authority to prohibit the carrying of concealed weapons. They do not give cities and villages the authority to prohibit handguns within their limits altogether; and we are not aware of any statutory authority for other local political subdivisions to do so either.

Accordingly, the exception does not appear to apply to cities and villages at all because there is nothing in Nebraska law that would permit a city or village to prohibit handguns altogether within its boundaries. Put another way and in the words of the exception itself, an entire city or village cannot be a "place or premises where handguns are prohibited."³

This understanding of the exception reflects a common sense reading of it. Wherever there is a valid law or rule or regulation prohibiting handguns, whether concealed or not, from a particular place or premises, then even permitholders will not be permitted to carry concealed handguns in or on that place or premises. On the other hand, where there is not and cannot be a valid law or rule or regulation prohibiting handguns, whether concealed or not, from a particular place or premises, then permitholders may carry concealed handguns in that location unless some other exception applies.

Therefore, it is our opinion that the exception contained in § 69-2442(1)(a) of the Concealed Handgun Permit Act barring permitholders from carrying concealed handguns "into or onto any other place or premises where handguns are prohibited by law, rule or regulation" does not grant cities and villages the authority to ban the lawful carrying of concealed handguns by permitholders.

III.

Meaning of the "Other Place or Premises Where Handguns Are Prohibited" Exception

Your final question asks whether the provision found in § 69-2441(1)(a) of the Concealed Handgun Permit Act that prohibits even permitholders from carrying concealed handguns "into or onto any other place or premises where handguns are prohibited by law, rule or regulation" means that permitholders may not carry concealed handguns in a location "where the simple possession, let alone the carrying of a handgun, is otherwise prohibited." We believe that our discussion in subsection II above answers this inquiry.

It appears to us that the exception means exactly what it says: Where a valid statute, rule or regulation bans handguns altogether from a particular place or premises, even a permitholder under the act cannot carry a concealed handgun into or onto that place or premises. Such a ban on handguns in a particular place or premises would apply whether the handguns were being "carried," possessed by an individual in some other way or simply located in that place or premises.

Conclusion

Based upon the foregoing discussion our responses to your three questions are as follows:

1. It is our opinion that the Concealed Handgun Permit Act has preempted any local political subdivision ordinances banning the concealed carrying of handguns within their jurisdictions, at least to the extent that such ordinances may be deemed to apply to permitholders under the act.

2. It is our opinion that the provision found in § 69-2441(1)(a) of the Concealed Handgun Permit Act that prohibits even permitholders from carrying concealed handguns "into or onto any other place or premises where handguns are prohibited by law, rule or regulation" does not grant local political subdivisions the authority to ban the lawful carrying of concealed handguns by permitholders.

3. It is our opinion that the provision found in § 69-2441(1)(a) of the Concealed Handgun Permit Act that prohibits even permitholders from carrying concealed handguns "into or onto any other place or premises where handguns are prohibited by law, rule or regulation" means that permitholders may not carry concealed handguns in a location "where the simple possession, let alone the carrying of a handgun, is otherwise prohibited."

We hope that the discussion and opinions contained herein will be of assistance to you in deciding whether or not to introduce legislation addressing the issues you have raised and in formulating any such proposed legislation.

¹ In your letter you pose your questions using the term "local political subdivision," rather than "city" or "village." After discussing this with your staff, however, we have limited our analysis to the authority (or lack of authority) of cities and villages with regard to the carrying of concealed handguns by permitholders under the act since we are not aware of any "local political subdivisions" except cities and villages that have statutes authorizing them to enact ordinances banning concealed weapons. In any event, while our analysis will deal directly with the authority of cities and villages in this context, we believe it would apply equally to any counties that might seek to bar the carrying of concealed handguns by permitholders under the act.

² While not able to prohibit permitholders from carrying concealed handguns anywhere in the city, a city or village could still, under the next-to-last exception in § 69-2441(1)(a) of the act, prohibit permitholders from carrying concealed handguns in specific places or premises that it directly controls. For example, a city or village could ban concealed handguns in city-owned parks, buildings, recreation facilities, arenas, etc.

The city or village would have to comply with the procedures outlined in § 69-2441(2) regarding the posting of notice.

We do not believe, however, that these posting provisions can be used by a city or village to prohibit permitholders from carrying concealed handguns anywhere within its borders. To allow cities and villages to use the posting provisions to ban permitholders from carrying concealed handguns on any public property (especially streets and other public ways) within their borders would seriously undermine the policy of the Legislature to allow permitholders to carry their concealed handguns "anywhere in Nebraska." Also, the term "in control of the property" seems to suggest that it is a narrow exception which only applies to owners or lessees of distinct "properties" and not to a city or village, which may have some "control" over everything within its boundaries, but is the owner or lessee only of property it, as an entity, actually owns or leases. Therefore, it appears that cities and villages cannot utilize this provision to effectively ban permitholders from carrying concealed handguns everywhere within their boundaries.

Common sense would also indicate that a city or village cannot effectively bar permitholders from carrying concealed handguns throughout its territory by claiming that all streets and sidewalks are its "property" and posting notice that concealed handguns may not be carried on its streets and sidewalks, even in vehicles. Indeed, § 69-2441(2) specifically says that a permitholder is not in violation of any posted ban on concealed handguns at the particular place or premises "so long as the handgun is not removed from the vehicle while the vehicle is in or on the place or premises."

³ Were a county, city or village to ban the possession or carrying of handguns throughout its geographical territory, it might run afoul of U.S. Const. amend. II and/or Neb. Const. art. I, § 1. See, *District of Columbia v. Heller*, __ U.S.__, 128 S.Ct. 2783 (2008) (holding municipal law that totally banned possession of firearms in the home unconstitutional as violative of Second Amendment right "to keep and bear Arms").

Sincerely yours,
JON BRUNING
Attorney General

(Signed) Charles E. Lowe
Assistant Attorney General

pc: Patrick J. O'Donnell,
Clerk of the Nebraska Legislature
17-043-20

VISITOR

The Doctor of the Day was Dr. Dale Michels from Lincoln.

ADJOURNMENT

At 11:08 a.m., on a motion by Senator Howard, the Legislature adjourned until 9:30 a.m., Thursday, January 15, 2009.

Patrick J. O'Donnell
Clerk of the Legislature