

February 2, 1984

LB 551

different kinds of areas about what is or is not an unreasonable burden and there have been some cases in the price fixing area. Milk prices have been fixed in certain states and in one case in California they allowed essentially some state action that had the effect of fixing the prices of raisins even though 95 percent of those raisins were being shipped out of the State of California and all over America but the impact of raisins is different from the impact of feed grains and wheat and some of the things that we are talking about. And although I think that it is arguable, that it is arguable that you could do what is promoted by LB 551 and take a case to the court and maybe get approval, I think that the chances are more likely that the court is going to say that what is being promoted in this particular instance is an unreasonable burden on interstate commerce. I happen to be somewhat of a social realist in terms of my interpretations of what a court is going to say and it is one thing to say, yes, price fixing in a case involving raisins is reasonable when raisins of course are not a crucial product or a product that is marketed nearly on the scale or nearly as important as a feed grain. You know, raisins are peanuts, but corn and wheat are not peanuts and will have an enormous impact on consumers all over the country, would have enormous impact on the economy of the country generally and I think that it is far more likely that the court is going to say that it is an unreasonable burden on interstate commerce than it is that they are going to say, yes, go ahead and try this grand experiment and let's see what it does to the economy. So the kill motion then reflects my opinion in that regard that it would be unconstitutional in terms of the federal Constitution. In addition the Attorney General has given an opinion to Senator Haberman on this bill and what that opinion says is that it is also a violation of the Nebraska Constitution primarily because it has granted to two federal agencies powers that are reserved to the Legislature itself and by that it means that the formula by which you determine the price at which grain can be sold under this bill is in part influenced by the county loan rate and the county loan rate is determined by a federal agency. And so that is an example of what they mean when they say in effect a federal agency is going to have influence on what that price is and