

March 17, 1980

LB 605

with identification is meaningless while officers would likely always identify themselves before ordering dispersal. The defendant can claim he couldn't see or hear because of the crowd. It only weakens the bill, however, these problems are probably only academic as the order to disperse can only be given to participants who can be charged with another crime which constitutes at least disturbing the peace. While the other crime may be more difficult to prove it will have to be proven anyhow, anyway to show the defendant or the participant who refused to disperse. For the reasons stated above we respectfully request that the bill be withdrawn unless you feel it can be successfully amended to remedy the problems I have discussed. Law enforcement officers, members of the Legislature and the public should not be misled into thinking the Legislature had resolved the problem by passing LB 605 in its present form. You can be rest assured that we will do the best we can with what we have to handle such situations without statutory support. Your support and assistance in seeking a statutory solution to this problem is appreciated. Colonel Kohmetscher, State Patrol." The amendments that I put in, this is what they do. Section 1. When three or more persons are disturbing the peace, police may order to disperse (1) the participants, (2) others whose close proximity create clear, present and substantial damage to themselves or police. Clear and present damage is a traditional U.S. Supreme Court test on when it is okay to infringe on the first amendment right. We have taken care of that objection. Section 2. Members of the news media are exempt from this bill unless personally disturbing the peace or obstructing the police. News media are not exempt from obstructing statute. Section 3. The same affirmative defense if police fail to identify themselves. Section 4. The emergency clause. You also received a letter from General Binder of the National Guard. He, too, would like to have these tools to help. You also have received a letter from Eugene Mahoney of the Game and Parks Commission. I also have the support of the head of the police department of the University of Nebraska Lincoln police. These people are saying to you, give us the tools to do our job. We need them. We had them before and we did not abuse them. Please give us back this tool and I, for one, and I hope that the majority of the senators here on this floor, will give them back the tool that they need to do the job. Now these are the same people who are killed in the line of duty doing their job for us. If we have a confrontation with another country and we go to war, who are they going to call up? The National Guard. They are going to lay their lives on the job to help us. The leader of the National

8427