

April 18, 1980

LB 991

was unconstitutional. Senator DeCamp, can I ask you what your opinion is on the bill as far as its constitutionality is concerned?

PRESIDENT: Senator DeCamp, will you respond?

SENATOR DE CAMP: Mr. President, there are parts of the bill that are clearly unconstitutional. I don't think anybody doubts that. Whether a court is going to correct those parts through severability is a separate question. In the Parma, Ohio, case that was just handed down, I have copies of it, the Federal District Court, a bill almost identical to this, first time they have ever done it on this head shop issue, they upheld it as constitutional, striking out the parts they felt were unconstitutional. Now if a district court here chose to do that you might end up with something. The district court there did point out, even though it upheld it as constitutional, that it was maybe unworkable and there were better methods of accomplishing this. It was a two hundred page opinion. I think Senator Nichol and Senator Venditte both have this information. The point is, they did uphold it, they did basically rewrite it, they did say there were better ways but it was constitutional.

PRESIDENT: A half a minute on your time, Senator Beutler.

SENATOR DE CAMP: This thing is unconstitutional as it stands in certain areas.

SENATOR BEUTLER: Senator Johnson, in your opinion, are any portions of the bill unconstitutional?

PRESIDENT: Half a minute opinion.

SENATOR JOHNSON: Senator Beutler, I just based my opinion essentially on what the Attorney General told us and in Paul Douglas' opinion, they did, March 7, 1980, said that the bill was unconstitutional in many aspects and it is a relatively well-reasoned opinion and I don't see any reason to doubt the opinion. I suppose in the end one of the other fascinating aspects of the issue is this. The bill itself is one promulgated by the United States Attorney General, a law enforcement officer. Our own Attorney General, you would think, would have a true interest in law enforcement and would probably be inclined to want to find this bill constitutional and yet it says, it is not a constitutional bill.