

April 18, 1980

LB 991

Attorney General in not wanting to pass something that is unconstitutional. We always work toward that end and for any of us to work otherwise is foolhardy. We all want to reach the same goal, to remove drug paraphernalia enticement. We don't want these things being sold to young people to entice them into something that is illegal. LB 991 is the model Drug Paraphernalia Act. Until recently the constitutionality of this legislation has been subject to a wise variety of opinions, both from a local and national level, yet under April 14th and this is April 18th, just this past Monday, these opinions could not point to a specific court case which addressed the model Drug Paraphernalia Act because none existed. This past Monday the United States District Court for the northern district of Ohio ruled specifically on the model Drug Paraphernalia Act. That court's decision, this act is not unconstitutional and that the definitional sections are insufficiently drafted to overcome a tax based on vagueness and overbread. We are no longer subject to the mere opinion and conjecture. The United States District Court has given us the guidance we have been seeking. If you oppose this bill in the objective it seeks, vote red, but let's not create a smoke screen about this constitutionality especially now that we do have the United States District Court decision directly on the point. Now it was brought out that we ought to take time. What for? So the drug operators and paraphernalia dealers can work another year? Sure, that is what they want. They say, and I have heard it and you have heard it, you can't do this to us. It puts us out of business. This reduces our taxation in the state. So what? I would be glad that they would not be in business and we would miss out on that little bit of taxation. Any Attorney General's opinion is a guide. Now, Senator Wesley, if you want to be guided by the Attorney General's opinion or a fellow in the Attorney General's office and one man's opinion, you go ahead but I don't want to. The Attorney General is not the legislative body in this state. When we pass a law it is not the Attorney General that says whether it is constitutional or not. It is the courts that say it and I am willing to take my chance on going to any court in the State of Nebraska. Now on the two points Senator Beutler is right. Two points were unconstitutional. What about all the rest? They are okay. Two points and I admit it, Senator Beutler. Our courts in this state can rule the same way or in a different way if they so choose. They may see otherwise but for the most part this court has said, this act is constitutional.

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