

April 11, 1974

Even though for policy considerations I was opposed to it. My amendment does not touch the constitutionality of the bill. But here's what I want you to consider if you kill this bill which puts Omaha into it, it will then be a bill or a section of statute with a portion of it unconstitutional. Senator Luedtke, may I ask you a question or two to help me bring this point out that I'm trying to make?

PRESIDENT: Senator Luedtke, do you care to yield?

SENATOR CHAMBERS: If there is a statute, if there is a statute and a part of it is unconstitutional as was declared by Judge Hastings and there is no severability clause...

(End of Belt 1)

(Begin Belt 2)

does that entire section fall?

SENATOR LUEDTKE: You're talking about a section now, not the whole wall?

SENATOR CHAMBERS: This particular, what we're talking about, the part that Senator Stahmer wants to save, is a part of the same section that was ruled unconstitutional.

SENATOR LUEDTKE: I think you're correct if you're talking about one single section. That would be the severability... there is severability but only by section.

SENATOR CHAMBERS: So there is no severability in this specific section? Oh, maybe Senator Fellman wants to add to it?

PRESIDENT: Senator Fellman, do you care to respond?

SENATOR FELLMAN: Mr. President, I don't want to get in a three way fight but without going to the merits, the answer to your question is not until the Supreme Court says its unconstitutional. District judge, there could be, there's forty, fifty district judges and they can have different opinions. And the law still stays in effect until the Supreme Court says its unconstitutional.

SENATOR CHAMBERS: Thank you, Senator Fellman. Now, I'll make the point.....

PRESIDENT: Okay, back to Senator Chambers.

SENATOR CHAMBERS: All right, I think the judge had a well reasoned opinion and there's a good chance that his decision will be upheld. Now if you want to take the risk of it not being upheld and killing this bill, then you're going...and I don't care if you kill it or not, you're going to be left with the statute as it was with that portion that the judge said was unconstitutional. If his opinion is upheld, if his opinion is upheld on appeal, then you don't have any of this statute left, Senator Stahmer, so you're still without a provision to allow the thing to happen that you would want to happen.