

April 28, 1975

SENATOR DeCAMP: Would it be legislating retroactive?

SENATOR STULL: Yes.

SENATOR DeCAMP: Well, there is a question as to whether it is retroactive or prospective. It is setting a certain standard. Now misfeasance, apparently, hasn't been determined or nobody has said, I am guilty of misfeasance at this point. So if in the future, a determination were made that somebody was guilty of that, it would be retroactive only in terms of the responsibility determination but that is the case with any law. You pass a law and maybe somebody is guilty of something but it is not determined until down here. So it is not "a retroactive law as such". No.

SENATOR STULL: OK. I wanted to be real sure of that and I wanted you to say that. Thank you.

PRESIDENT: Senator Cavanaugh.

SENATOR CAVANAUGH: Another question of Senator DeCamp.

SENATOR DeCAMP: Yes.

SENATOR CAVANAUGH: When you say, guilty of misfeasance, would that require a conviction by the officeholder prior to any liability arising on the part of the Department? Is misfeasance...are you referring to the criminal charge of misfeasance of office?

SENATOR DeCAMP: I am referring to the broad definition of misfeasance, whether a criminal conviction would actually have to occur, I am not going to make a judgment at this time. Your question, then, is, well, how do we determine misfeasance?

SENATOR CAVANAUGH: No, my question is, the language of your amendment where it says, guilty of misfeasance. That would appear to me to require...I assume your liability relates to a civil suit between either a stockholder or a policyholder who is damaged as a result of the management or alleging damages..civil damages as a result of the mismanagement of the company by the Director or the conservator. Now, in order for him to establish liability on the part of the state of Nebraska, does your language of guilty of misfeasance require a prior conviction or adjudication of the Director in criminal case of misfeasance?

SENATOR DeCAMP: I don't believe a criminal case would necessarily have to be involved. For example, the matter may end up...in fact, I believe attempts are being made where it might end up in the bankruptcy courts and the bankruptcy judge might say, there is X amount of dollars and so many were lost and he might make a finding of misfeasance that caused this. This would be a finding of misfeasance by a judge. This would be a judicial determination. It would be broader than that, yes, broader than criminal.

SENATOR CAVANAUGH: Would you mind having this on Select File for a day or so?