

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

March 31, 2004 LB 657, 1090

I stand by my earlier comments that this is constitutionally suspect. In the Hershey case, which is a 1980 case, the court struck down a statute that the Legislature had adopted that basically gave some...put a surcharge or a tax on electricity. And they cited to various constitutional provisions that were put in place in 1958 to clarify the public power's payments and utilities of taxes...or payments in lieu of taxes, excuse me. The school district argued that the Legislature had plenary power--means broad power--over a public corporation, and they...basically, the Legislature could assess the tax if they want. The court disagreed, and they said, the school district argues that the state can require a public corporation, like a power district, to expend its funds for a public purpose, a judgment, subject only to the same constitutional limitations as though it were directing the appropriation and disposition of General Funds of the state. The court disagreed with the school district's argument. They said, the constitution provides that the in lieu of tax payments authorized by this section shall be in lieu of all other taxes and payments in lieu of taxes, with specified exceptions. And what I had mentioned earlier, and I didn't have a lot of time, is that the Attorney General Opinion that Senator Beutler cited does mention the Hershey case. And it says, unlike the mandatory payments public electric utilities were required to make to school districts under the statute held unconstitutional in the Hershey case, the one I just talked about, the electricity surcharge in LB 657, Senator Beutler's bill, does not impose a liability or payment obligation on electricity suppliers. So it seems to me what the Attorney General Opinion is trying to distinguish, that it's not a tax on electricity suppliers. Well how could it...their argument is, and the AG's Opinion, is that it's always going to be a tax paid on the ratepayer, not the supplier. So there's no way that could ever. With that, Mr. Bromm, I think I'll conclude. I think we have (laugh) some visitors in here that are distracting the process. So we'll continue the debate in a bit.

SPEAKER BROMM: Thank you, Senator Bourne. Members of the Legislature, I think this would be an appropriate time for us to be at ease. And in a couple of minutes, we want to make some introductions. And at that time we'll ask you to hold your discussions down. And then after those introductions, you'll