

May 11, 1981

LB 548

So the committee that heard 273, and, of course, this body has approved 273 on General File and on Select File, have said we shall indemnify our state employees acting within the scope of their employment for harm that they do so long as they don't act willfully or wantonly. Now it seems to me when a U. S. District Court has said that our warden and deputy warden were deliberately indifferent, they were deliberately indifferent, to the rights of an inmate, that that conduct is tantamount to a willful or a wanton neglect of duty. And we are about to set a policy for the State of Nebraska that those kinds of employees and those kinds of acts will not be compensated and I think if we are going to be consistent with that which we are attempting to do with 273 we should not allow Warden Parratt and Deputy Warden Nance's claim for indemnification. Instead we should say to these gentlemen, as hard as it is, as hard as it is, this is a claim that you, yourself, have to satisfy out of your own pockets. It is a \$3,000 claim. It is no small amount and none of us would want to have to do it but one of the effects that that kind of action has is its instructional effect, and the instruction simply is that we say to people who happen to be our employees, "You have got to be careful in what you do. You can't go beyond the bounds of propriety and of constitutional law, because if you do, you may well end up paying the piper. We are not going to hold your hand everytime. So you have got to be careful with the people who are in your care". Just as we ought to have said that to the people who were caring for Joe Soukup. So it seems to me that the better policy in this instance is to reject the claim because it will continue a policy that I think that you and I are about to adopt when we pass 273.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, Senator Johnson, how did you vote on that amendment, 273, this morning?

SENATOR V. JOHNSON: Which amendment was that, Senator?

SENATOR NICHOL: That was the amendment that has to do with us picking up the fee when a public employee is, shall we say, "indifferent". How did you vote on that?

SENATOR V. JOHNSON: I voted for the amendment.

SENATOR NICHOL: Okay, thank you. My point is this. We are going two ways at the same time. If we are going to do this and say that somebody by being indifferent is willful and wanton, then why don't we say that the people who