

May 29, 1981

LB 321

PRESIDENT: The question has been called for. Do I see five hands? I do. All those in favor of ceasing debate vote aye, opposed nay. Record the vote.

CLERK: 29 ayes, 5 nays to cease debate, Mr. President.

PRESIDENT: Debate ceases. Senator Beutler, you may close on your motion to bracket.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, Senator Higgins, I have tried to be conservative when I stand up here and tell you there is a constitutional problem. I try to be very conservative. In fact, I think that you will recall that I have only done this five or six times in the three years I have been in the Legislature. So far the record has been perfect. I am going to miss once in a while too because all these things are a matter of judgment but I think that there is a real problem here. The Attorney General has given you an opinion. He has said that time does not permit a thorough discussion of the establishment clause portion of the opinion. He did not say that with regard to the lending of the credit portion of this opinion. Similar legislation to this may be in other states but those states do not have the Nebraska Constitution and it is the Nebraska Constitution against which we have to measure LB 321. Lawyers draft bills for clients and if a client comes in and says that I want a bill that permits the issuance of tax exempt bonds to help with construction of private colleges, the lawyer says, yes, I will draft that for you. And if the client asks him if there is a constitutional problem, he will give him advice but they may well choose to try the statutory method until they are forced to try the constitutional method because the constitutional method obviously is much much more difficult and much much more expensive, and let me give you an example of exactly how this happens. There was a time not too many years ago when we decided we were going to have industrial development bonds and they drafted a very complete, much like 321, Industrial Development Bond Act and they came into the Legislature and the arguments were made and it was said it was unconstitutional. They ignored them. We passed it and sure enough, it was declared to be unconstitutional, a violation of the Constitutional amendment, came back another year and passed the bill again and now we have industrial development bonds in this state, but my point is this. Just because they came in with a bill and just because Mr. Johnson is a good lawyer, and he is a very good one, doesn't mean that he has exercised the judgment that it is constitutional. All it means is that his clients have decided they are going to try this route first. So I hope that argument is not persuasive with you. Surely