

April 16, 1982

LB 404

SENATOR LAMB: All provisions of law relative to procedure having been complied with, the question is, shall the bill pass. Since this is creating a new agency it will require 33 votes. Senator Fowler.

SENATOR FOWLER: I guess I would respectfully disagree with the Chair that we are creating a new agency. I guess I would like just for him to cite the Constitutional provision that he is using to require 33 votes for passage of this bill.

SENATOR LAMB: Senator Fowler, Article 4, Section 27, "No executive state office other than herein provided shall be created except by a two-thirds majority of all members elected to the Legislature."

SENATOR FOWLER: I would appeal the ruling of the Chair that this bill creates a new agency, executive agency, if I could I would like to, although I have had a couple of surprises on this bill I guess I would like to argue a few things with regards to that, if I may. Is that acceptable? Move to overrule your decision. The first cite I guess, following Senator Kahle's admonition, I'm trying to be calm about this. Let me first cite the concept as I indicated when Senator Beutler was discussing, we are not creating something new, we are replacing one executive office, the Commission on Aging, with another executive office, the Department on Aging. I guess the source for that I would cite, is the title of the bill itself, and it says, "To replace the Nebraska Commission on Aging with the Department", so we are replacing a commission which is one executive agency with a department which is another executive office. Now some might argue that the commission is not an executive office and I guess I would cite for foundation that in fact the commission is an executive office, the first part of the Constitution that says, there are only three divisions of government, Executive, Judicial and Legislative. I would say the Nebraska Commission on Aging is neither Legislative nor Judicial so it must in fact be Executive. Now although this motion or this ruling may have taken me a little bit by surprise I did have a chance to pull some cases and it seems that in previous court decisions as to whether or not commissions are in fact executive departments, if one was to look at Makota versus the State Board of Equalization and Assessment, they cite three other cases where this was discussed. (1) Iams versus Mellor, where it says a Stallion Registration Board was considered to be an office, within the meaning of the term, and we are talking about the Executive Office Section that Senator Lamb

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