

January 29, 1991 LB 125

SENATOR KRISTENSEN: Or a...well, let's just say that we pass a bill in here that makes it illegal to drive on the right side of the road, for example, and we've got a lot of people who have been convicted under that and there are various stages, some of them are in county court being prosecuted, some are on appeal to the district court, but there is one person who has got that case all the way to the Nebraska Supreme Court. My question to you is, would all those people get their attorney's fees if the one person was successful or would it only be the one person who actually appealed to the Nebraska Supreme Court?

SENATOR ELMER: Senator Kristensen, it would be the one person that appealed successfully to the Nebraska Supreme Court. In the cases where some may have been decided in the past, but without being asked if it is constitutional or not, they would not be eligible. It's only the individual that challenges the constitutionality and it has to be prospective, the bill is prospective so that if we pass this, individuals that have been prosecuted on criminal offenses that have been found unconstitutional in the past are not eligible to apply for those fees that occurred before this bill was passed.

SENATOR KRISTENSEN: In other words, the only people this will apply to are those who, after the enacting date, or the effective date of this legislation take their case to the Supreme Court. It doesn't apply to people in the past who have gotten other bills or other pieces of legislation found unconstitutional?

SENATOR ELMER: That is correct and it would apply only to the person who does challenge the Constitution.

SPEAKER BAACK: One minute.

SENATOR KRISTENSEN: Okay. I have one other question for you. In the bill there is language, the Supreme Court shall determine the amount, if any. Is it your intent that the phrase "if any" means that the Supreme Court doesn't have to award fees, it is solely discretion upon their part?

SENATOR ELMER: Yes. If you read a little earlier, it says, the Supreme Court may award legal fees and shall award money, if any.

SENATOR KRISTENSEN: And, that's the purpose of my question,