

February 12, 1991 LB 125

strike this portion of it says that no award can be obtained under this bill unless the ordinance is known at the time of passage to be unconstitutional. Excuse me, I want to consult with counsel for a second.

SENATOR BEUTLER: Senator Chambers, my speaker is on, may I speak?

SENATOR CHAMBERS: It was a different matter. Colloquies and soliloquies sometimes shouldn't occur, but anyway Senator Wickersham was trying to be helpful to me but I don't want to get distracted from my question and then maybe what they are going to offer would fit in better. But, Senator Beutler, under the present wording of this amendment that I want to strike, the enacting body would be in a position where they had knowledge or should have had knowledge that the ordinance was unconstitutional. The example that I'm giving is one where I'll concede, although I'm not agreeing that they may not have known at the time they enacted this ordinance that it was unconstitutional and they acted in the good faith that you're talking about. But after having had a declaration by the court that it's unconstitutional, good faith is out the window. It was ruled unconstitutional, and after that ruling, they made a deliberate decision to retain it on the books. Therefore, when it is enforced against the citizen and that citizen is put to the expense of a defense, he or she cannot recover costs because the unconstitutionality was determined after enactment, maybe a long time after, but it was also after...

PRESIDENT MOUL PRESIDING

PRESIDENT MOUL: One minute.

SENATOR CHAMBERS: ...the city became aware that it was unconstitutional. So do you think under the circumstances that exist in Omaha now a person should have to pay the cost of defending against a known unconsti'tutional ordinance?

SENATOR BEUTLER: Senator Chambers, I concede your point, and Senator Wickersham has some language that hopefully would address that point by simply saying at the time it was enacted or the time, and/or the time it was prosecuted. What we need here, we're making sausage on the floor and it's wrong to delete section 3, but your point is correct. What we need is language that modifies this particular section and if we had probably