

March 5, 1992

LB 1063
LR 219

there was a federal case. There was a 1940 Nebraska case, Lenox v. Housing Authority of the City of Omaha. There was a 1936 case, Lokart v. Higgins. Other cases in other subdivisions in the memorandum will be distributed. There is no author's name on it. It comes out of the Governor's legal counsel office. There is a distinction between what we're doing here in LB 1063 from what Mr. Harrison wrote his memorandum on. And the distinction, as I understand it, is the case that Mr. Harrison cited, was one which the Legislature passed a law, just as we do probably too many times during a legislative session, passed a law, thought it was constitutional. Later on the Constitution was amended but the Legislature didn't have the authority to pass the law when it did pass the law, said nothing about contingencies of...of passing a constitutional amendment. What this law...what 1063 does and also coupling it with 219, it makes the passage of LB 1063 contingent upon passage of the constitutional amendment. It's very clear in the language that that is what we are...we are asking to do, and the language that the court has used, things like the Legislature can make a law to become operative on the happening of a certain contingency or on an ascertainment of a fact upon which the law intends to make its own action depend. The Nebraska case law mandates that the word "employee" need to show a clear intention, that it should have a retroactive effect. Admittedly, there are arguments on both sides but I think the arguments on this side, to me, make more validity that it is possible to...to pass a law that is...that is meant to take effect, based upon the contingency of passage of a constitutional amendment, provided that intent is very clear. And I think the intent could not be made more clear than it is here. I will have this distributed.

SPEAKER BAACK: Thank you, Senator Withem. Senator Kristensen, you're next.

SENATOR KRISTENSEN: Thank you, Mr. Speaker, and members of the Legislature, Senator Hall, you have struck upon a point that probably does need to have more or at least some intent of the Legislature here, and certainly it's our clear intent that this provision and the accompanying LB 1063, if it does pass and become law, that it is retrospective and that it applies to that and that's the key. The danger is that if you pass a...let's say if you pass a law and I want to say that some behavior of Senator Moore in the past was wrong and I didn't like the way that he behaved, which probably does occur, that this Legislature would pass a law that's saying the behavior that