

March 5, 1992

LB 829
LR 219

Legislature passed in violation of the Constitution is void from the date of its enactment and not from the time it is judicially determined to be in conflict with the Constitution. I don't think that's been overturned. Now, you know, maybe because it's almost a hundred years old, somebody will say, well, that's no longer applicable. They haven't said it between now and 1899. There's the Central National Bank v. Sutherland case in 1925, dealt with the taxation of state and national banks, authorizing legislation enacted by Congress. Legislation enacted by Congress. The Nebraska Supreme Court held that a legislative act which, when enacted, is violative of the Constitution cannot subsequently become valid law merely because the reason for its invalidity has been removed without being reenacted by the Legislature. In that...in Lenox v. Housing Authority of the City of Omaha, Nebraska reinstated the rule from Central National Bank and then said this is undoubtedly the rule where the subject of the proposed legislation was at the time prohibited by the Constitution. It goes on and we're getting this next piece for you as well. In an opinion to Senator Carol McBride Pirsch, dated April 15, 1983, the Attorney General indicated that any attempt to make the effectiveness of the legislation contingent upon an amendment to the Constitution created constitutional problems and the Attorney General used the cases in the outstanding memo for the basis of that opinion. I again rise to oppose the amendment and just want to lay out the record for purposes of down the road. I will have the memo copied for you as well as the AG's Opinion to Senator Pirsch from 1983.

SPEAKER BAACK: Thank you, Senator Hall. Senator Schmit, you are next.

SENATOR SCHMIT: One of the intriguing aspects of a Legislature is that no matter how many times we get burned we continually want to fly into the flame and it would appear to me that, while we are in the process of trying to correct some of the problems we have had in the past, that we come along with a constitutional amendment that we might just be getting it back into the same kind of difficulty. And, I guess, the question that I raise is this, at what point do we wear out the patience of the court totally and irrevocably? It would be so much easier to take the pertinent facts of LB 829, extend the exemptions on personal property tax and then have an all blood and guts fight, I guess, as to what you want to do in the 1993 session and maybe a lot of new faces...we know there will be a