

Is that true?

SENATOR WICKERSHAM: Yes, I believe that's the most typical example.

SENATOR CHAMBERS: Now, if somebody has a large hog confinement operation and odors and other things that relate, flies, dust and so forth, are to be controlled, would that be, in your view, a taking without compensation that you envision under this language?

SENATOR WICKERSHAM: There are those who I think could assert that would be an aspect of the rule-making process, because if it affects the operation, or if it costs to have abatement processes or procedures put in place, I think those would argue that that's a taking, whether or not it is or not I don't think has necessarily been decided in the State of Nebraska.

SENATOR CHAMBERS: How could that cost the state anything? How could the state be required to compensate somebody running a confinement operation? How could the state be required to pay that person because it requires that person to hold down odors, dust and flies?

SENATOR WICKERSHAM: Under current law, I do not believe they would be.

SENATOR CHAMBERS: So then that wouldn't qualify as a taking without compensation, would it, because no property is taken anyway. How can the abatement of a nuisance be a taking of property, in any sense, and I'm asking for your explanation, because you mentioned that as an example.

SENATOR WICKERSHAM: Well, for example, if the rules or regulations that were adopted were so burdensome that they could not be complied with and it was impossible to conduct a hog confinement operation on the premises, arguably you have taken away the ability to conduct a business which otherwise would be a legitimate business on the premises. You would have reduced its value, you would have taken, if you will, the ability to perform an economic and useful function on that property.

SENATOR CHAMBERS: And that should be mentioned by the agency as one of those takings which could make the state liable to pay this...