

May 24, 2004

Governor Mike Johanns
State Capitol
2nd Floor N.E.
Lincoln, NE 68509

Dear Governor Johanns:

I am writing in response to the letter you recently sent to the Honorable Robert B. Zoellick, the United States Trade Representative (USTR). In this May 10, 2004, letter, you purport to bind the State of Nebraska to the procurement chapters of the trade agreements that the USTR is currently negotiating. The letter was apparently in response to a September 2003 letter from the USTR requesting your "consent."

This "consent" causes me grave concerns. First, I simply do not understand the basis for it. It seems clear to me that the state's procurement laws are matters within the purview of the Legislature. At the very least, your commitment would seem to restrict the Legislature's ability to modify these provisions in the future. I am unaware of any authority granting the Executive Branch the ability to legislate in this fashion. I therefore ask that you identify the authority, either constitutional or statutory, under which you have committed Nebraska to comply with the procurement policies included in the various trade agreements at issue. I have also have requested an Attorney General's opinion on this question.

In addition, it seems to me that the USTR's attempt to obtain state "commitments" sets a dangerous precedent. By simply accepting the word of the Executive Branch as binding a state on an issue such as this, the federal government is able to dictate policy in matters that are typically reserved to the states and their legislators. This interference in state's rights ultimately leads to a breakdown of local control. By excluding the Legislature from this process, the federal government has effectively eliminated future opportunities for the public to comment as to how their state tax dollars are spent. Good government demands more.

I am also concerned by the broad nature of your "consent." You indicated that Nebraska agreed to be bound by the procurement provisions in all of the trade agreements that the USTR is currently negotiating. Although you also seek to limit Nebraska's commitment by referencing the WTO Agreement on Government Procurement, I question the effectiveness of this limitation. The procurement provisions of each agreement need to be considered individually, by the legislative body, before Nebraska pledges its commitment. To do otherwise may result in the assumption of obligations that are not in the best interest of the state.

Finally, as a general matter, I am concerned that these trade agreements may threaten the agriculture industry in this state. As you well know, farm subsidies are essential for the survival of the family farmer. Nevertheless, provisions in certain trade agreements could result in the reduction or elimination of these subsidies. I think we can both agree that this is not something our state should support. And we should not be supporting any such trade agreement in any way.

For these and other reasons, I am urging you to withdraw immediately your May 10, 2004, letter of "consent," pending legislative consideration of these issues. It is my understanding that the trade agreement with Australia, which is apparently one of the agreements to which you have committed Nebraska, was signed last week and is likely to be approved within a fairly short time frame. It is also my understanding that once agreements like this are approved, it becomes very difficult, if not impossible, for a state to revoke its commitment. Thus, it is imperative that you contact the USTR as soon as possible.

Thank you for your prompt attention to this matter. I look forward to hearing from you.

Very Truly Yours,

Chris Beutler
District 28

Enc.

cc: Attorney General Jon Bruning
The Public