## IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

CLAIR CALLAN,	)	DOCKET	497	PAGE	298
Plaintiff,	)				
vs.	)		ORDER		
M. BERRI BALKA, State Tax Commissioner,	)				
Defendant.	;				

This matter came before the Court on November 9, 1993, for hearing to determine whether the defendant's motion for summary judgment should be granted pursuant to <u>Neb. Rev. Stat.</u> §25-1331 (Reissue 1989). The plaintiff appeared by his attorney, Joseph Casson. The defendant appeared by Deputy Attorney General L. Steven Grasz. A hearing was held, Exhibits 1 through 6 were received into evidence, and oral argument was held before the Court. The matter was then submitted to the Court on briefs including the amicus brief on behalf of American Corn Growers Association, et al. The Court now being fully advised finds and orders as follows:

1. A summary judgment is properly granted if the pleadings, deposition, admissions, stipulations, and affidavits in the record do not disclose a genuine issue of material fact. <u>Neb. Rev. Stat.</u> §25-1332 (Reissue 1989). After the party requesting summary judgment has shown facts entitling that party to summary judgment, the opposing party has the burden of showing that there is a genuine issue of material fact. <u>Abbound v. Michals</u>, 241 Neb. 747, 752, 491 N.W.2d 34, 38 (1992). 2. The party claiming that a legislative act is unconstitutional sustains the burden of clearly demonstrating such unconstitutionality. <u>Haman v. Marsh</u>, 237 Neb. 699, 708, 467 N.W.2d 836, 844 (1991). All reasonable doubts concerning the constitutionality of legislation will be resolved in favor of constitutionality. <u>Haman</u> at 708, 467 N.W.2d at 844.

3. Sections 66-1326 and 66-1329 of the Ethanol Development Act do not constitute an unlawful extension of the state's credit being given or loaned in the aid of an individual, association or corporation in violation of Neb. Const. Art. XIII, §3.

4. The Ethanol Development Act serves a valid public purpose as evidenced by <u>Neb. Rev. Stat.</u> §§66-1331 and 1332 (Supp. 1993).

5. The Court finds that the defendant has shown that the pleadings, depositions, admissions, stipulations, and affidavits in the record do not disclose a genuine issue of material fact.

6. For these reasons the defendant's motion for summary judgment is granted and judgment is hereby entered dismissing plaintiff's petition at plaintiff's costs.

DATED AND SIGNED this 7th day of March, 1994.

BY THE COURT: McGinn **.**T.

District Judge