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NO.
STATE OF NEBRASKA
OFFICIAL
JUN 3 1994
DEPT. OF JUSTICE

DATE: June 2, 1994

SUBJECT: Whether a city of the second class may assess property owned by the State of Nebraska for the costs of paving and other street improvements.

REQUESTED BY: Stanley M. Heng, Adjutant General
Nebraska Military Department

WRITTEN BY: Don Stenberg, Attorney General
Lauren L. Hill, Assistant Attorney General

State Staff Judge Advocate Ltc. Steven J. Reisdorff has requested that this office determine whether a city of the second class may assess property owned by the State of Nebraska, as an adjacent landowner, for the costs of paving and other street improvements. Further, we have been asked to determine whether actual notice of the creation of a paving district needs to be given to the State of Nebraska as a "non-resident" property-owner. The facts forming the basis of this opinion request are as follows:

Pursuant to its statutory authority, the city of Wahoo, Nebraska, has created a street improvement district which includes land owned by the State of Nebraska and used for armory purposes. The total front footage of streets to be improved within the improvement district is 2,643.88 feet. The armory property owned by the State comprises 333.27 feet, or 12.61%, of the total front footage of the street. The City of Wahoo contends that since the total bid for the street improvement district was $100,023.40, the State's portion of the assessable costs amounts to approximately $12,000.

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Analysis

Cities of the second class are defined by statute as "[a]ll cities, towns, and villages containing more than eight hundred and not more than five thousand inhabitants." Neb. Rev. Stat. § 17-101 (Supp. 1993). These cities are "governed by the provisions of sections 17-101 to 17-153 unless they adopt a village government as provided in sections 17-306 to 17-309." *Id.* The City of Wahoo, having a population of 3,681 inhabitants, is a city of the second class. Pursuant to Neb. Rev. Stat. § 17-508 - § 17-521 (1991 & Cum.Supp. 1992), second-class cities are vested with power to make street improvements and to assess adjacent or abutting landowners for the costs of the improvements. *See also* Neb. Const. art. VIII, § 6. Therefore,

> [w]henever the [city's] governing body deems it necessary to make any of the improvements named in section 17-509 [i.e., grade, change grade, curb, recurb, gutter, regutter, pave, gravel, regravel, macadamize, remacadamize, widen or narrow streets or roadways, resurface or relay existing pavement, or otherwise improve any street, streets, alley, alleys, public grounds or ways, or parts thereof], such governing body shall by ordinance create a paving, graveling, or other improvement district, and . . . shall publish notice of the creation of any such district for six days in a legal newspaper of the city or village if it is a daily newspaper or for two consecutive weeks if it is a weekly newspaper.

Neb. Rev. Stat. § 17-511 (1991).

If no objections to the planned improvements are filed with the city as provided by statute, then the city shall contract for the street improvements and "shall levy assessments on the lots and parcels of land abutting on or adjacent to such street. . . ." *Id.*

Although these general provisions may be pursued by cities of the second class, the Legislature has limited such cities' power to assess lands which are owned by the state or federal government. That limitation is found in Neb. Rev. Stat. § 17-520 (1991), which provides, in pertinent part:

> For all paving and improvements of the intersections and areas formed by the crossing of streets, avenues or alleys, **and one-half of the streets adjacent to real estate owned by the United States, the State of Nebraska or the city or village, the assessment shall be made upon all of the taxable property of the city or village . . . .**

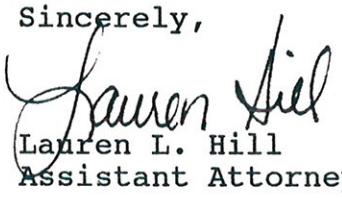
Id. (emphasis added).

We find that this provision prohibits a city of the second class from assessing adjacent land owned by the State of Nebraska for the costs of its planned street improvements. Our conclusion is based upon two tenets of statutory construction. First, "[a] statute is not to be read as if open to construction as a matter of course. Where the words of a statute are plain, direct, and unambiguous, no interpretation is needed to ascertain the meaning." ***Gillam v. Firestone Tire & Rubber Co.,*** 241 Neb. 414, 418, 489 N.W.2d 289, 292 (1992)(quoting ***County of Douglas v. Bd. of Regents,*** 210 Neb. 573, 577-78, 316 N.W.2d 62, 65 (1982)). Additionally, "[t]he legislative power and authority delegated to a city to construct local improvements and levy assessments for payments thereof is to be strictly construed, and every reasonable doubt as to the extent of limitation of such power and authority is resolved against the city and in favor of the taxpayer." ***Turner v. City of North Platte,*** 203 Neb. 706, 713-14, 279 N.W.2d 868, 873 (1979); ***Chicago & N.W. Railway Co. v. City of Seward,*** 166 Neb. 123, 127, 88 N.W.2d 175, 179 (1958).

Our conclusion is limited to street improvement assessments made by second-class cities. The Nebraska Legislature has enacted separate statutes governing special street improvement assessments made by cities of the metropolitan class (***see*** Neb. Rev. Stat. § 14-101 and § 14-3,110), cities of the primary class (***see*** Neb. Rev. Stat. § 15-101 and § 15-701 - § 15-709), and cities of the first class (***see*** Neb. Rev. Stat. § 16-101 and § 16-609 - § 16-655).

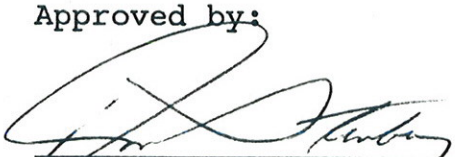
Finally, due to our conclusion that state property is exempt from assessment by a second-class city for the costs of street improvements, the issue of whether actual notice of the creation of a paving district must be provided to the State of Nebraska as a non-resident property owner is moot.

Sincerely,



Lauren L. Hill
Assistant Attorney General

Approved by:



DON STENBERG, Attorney General

cc: Ltc. Steven J. Reisdorff, State Staff Judge Advocate
Ltc. Thomas J. Dugdale, Assistant Staff Judge Advocate

24-1-7.OP