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NO
STATE OF NEBRASKA
OFFICIAL
AUG 4 1993
DEPT. OF JUSTICE

DATE: July 30, 1993

SUBJECT: Applicability of 1993 Neb. Laws LB 364, § 12, to the Interstate Agricultural Grain Marketing Commission

REQUESTED BY: Senator Rex Haberman
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Jan E. Rempe, Assistant Attorney General

You have requested our opinion regarding whether Neb. Rev. Stat. § 66-1321.01 (1990), as renumbered by 1993 Neb. Laws LB 364, § 12, applies to the Interstate Agricultural Grain Marketing Commission (Commission). We conclude that this statutory language does not apply to the Commission.

The Commission was created by the Interstate Compact on Agricultural Grain Marketing (Compact) whose purpose is to protect and enhance the welfare of state citizens and local communities engaged in the production and sale of agricultural grains and the continued production of such grains in quantities necessary to feed the world's increasing population. Compact, art. I. The Commission's powers include conducting studies and investigations of agricultural grain marketing practices, procedures, and controls and recommending solutions to problems in the current agricultural grain marketing system. Compact, art. IV.

You have asked whether section 66-1321.01 applies to the Commission. Although the Nebraska Legislature recently amended this statute by deleting its designation as "66-1321.01," *see* 1993

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Neb. Laws LB 364, § 12, the language of the statute has remained the same:

> Trade secrets, academic and scientific research work, and other proprietary or commercial information which may be filed with an application for a grant or loan or other financial assistance shall not be considered to be public records as defined in section 84-712.01 if the release of such trade secrets, work, or information would give advantage to business competitors and serve no public purpose. Any person seeking release of the trade secrets, work, or information as a public record shall demonstrate to the satisfaction of the board that the release would not violate this section.

1993 Neb. Laws LB 364, § 12.

Before the enactment of LB 364, this statute was part of the Ethanol Authority and Development Act (Act), which allowed cities, counties, and villages to apply for grants or loans from the Ethanol Authority and Development Board (Board) to facilitate construction, acquisition, or expansion of facilities related to ethanol production. Neb. Rev. Stat. § 66-1317 (1990). The Act required the Board to establish guidelines for such grant and loan applications. Neb. Rev. Stat. § 66-1319 (1990). Under the Act, section 66-1321.01 was just one of a series of provisions outlining this grant and loan procedure. *See* Neb. Rev. Stat. §§ 66-1317 to 66-1325 (1990 & Cum. Supp. 1992).

In LB 364, the 1993 Legislature renamed and revamped this Act, partly by repealing most of the above-referenced loan and grant provisions. 1993 Neb. Laws LB 364, § 26. LB 364 makes it clear that such grants and loans are no longer available under the newly-named Ethanol Development Act, but that repayment of loans made under the prior version of the Act are to be credited to a certain fund. 1993 Neb. Laws LB 364, § 13. The new act also retains the language used in section 66-1321.01 (1990) to clarify that trade secrets, academic and scientific research, or other proprietary or commercial information filed with a prior grant or loan application related to ethanol development are not public records if such information would advantage business competitors and serve no public purpose. 1993 Neb. Laws LB 364, § 12.

Under both the Ethanol Authority and Development Act and the 1993 Ethanol Development Act it is clear that the information deemed not to be public under Nebraska's public records statutes consists only of those trade secrets, academic and scientific research, and other proprietary or commercial information which is

filed with an application for a grant, loan, or other financial assistance to facilitate the construction, acquisition, or expansion of facilities related to ethanol production. § 66-1321.01 (1990); 1993 Neb. Laws LB 364, § 12. Such information, filed with the former Ethanol Authority and Development Board, has no apparent connection to information in the possession of the Interstate Agricultural Grain Marketing Commission.

CONCLUSION

Because the language of section 66-1321.01 and section 12 of LB 364 is limited to information filed with applications for ethanol-related financial assistance granted by the former Ethanol Authority and Development Board, such language does not apply to information now filed with the Interstate Agricultural Grain Marketing Commission.

Sincerely,

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cc: Patrick J. O'Donnell
Clerk of the Legislature

Approved By:

Attorney General

13-398-6.93c