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STATE OF NEBRASKA
OFFICIAL
AUG 26 1993
DEPT. OF JUSTICE

DATE: August 25, 1993

SUBJECT: Mileage Reimbursement for School Board Members; LB 697 and LB 734

REQUESTED BY: Dannie Trautwein, Director
Nebraska Accountability and Disclosure Commission

WRITTEN BY: Don Stenberg, Attorney General

You have inquired regarding the current allowable mileage reimbursement rate for school board members and employees of schools. As noted in your letter, in 1992, the Legislature passed LB 1001 (currently Neb. Rev. Stat. § 79-4,241 (1992 Cum. Supp.)) which provided that members of school boards can be reimbursed for mileage at a rate provided in Neb. Rev. Stat. § 81-1176 (1987). At the time LB 1001 was enacted, the rate set for reimbursement in Neb. Rev. Stat. § 81-1176 was .24 per mile.

On June 1, 1993, the Legislature passed LB 697 which was subsequently signed into law by the Governor on June 4, 1993. LB 697 contained an emergency clause which applied to all sections of the statute except sections 2 and 9 which were to become operative on July 1, 1993. Section 2 of LB 697 amended Neb. Rev. Stat. § 81-1176 relating to the reimbursement for transportation expenses.

On June 3, 1993, the Legislature passed LB 734 which was then signed by the Governor on June 9, 1993. LB 734 provided that certain public officials and employees of political subdivisions, including school districts, may be reimbursed for mileage at the rate allowed by Neb. Rev. Stat. § 81-1176. LB 734 carried the emergency clause for the entirety of the bill and thus became effective on June 10, 1993.

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On June 10, 1993, the date LB 734 became effective, the mileage rate allowed by Neb. Rev. Stat. § 81-1176 was .24 per mile. The amendment to Neb. Rev. Stat. § 81-1176 contained in LB 697 did not become effective until July 1, 1993.

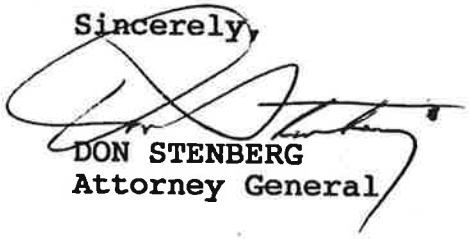
> A statute of specific reference incorporates the provisions referred to from the statute as of the time of adoption without subsequent amendments, unless the legislature has expressly or by strong implication shown its intention to incorporate subsequent amendments with the statute. In the absence of such intention subsequent amendment of the referred statute will have no effect on the reference statute.

Sutherland Stat. Const. § 51.08 at p. 192 (5th Ed.).

Your letter cites to ***Fisher v. City of Grand Island***, 239 Neb. 929, 479 N.W.2d 772 (1992), for the proposition that later amendments to incorporated statutes are not adopted by reference. However, ***Fisher*** specifically addressed the repeal of an adopted statute. It is our belief that ***Leach v. Dept. of Motor Vehicles***, 213 Neb. 103, 107, 327 N.W.2d 615, 618 (1982), should control in this case. In ***Leach***, the court drew a distinction between incorporated statutes that were amended as opposed to incorporated statutes that had been repealed. The court determined that subsequent amendments to the incorporated statutes were adopted in the incorporating statute.

Further, our review of the legislative history of the statutes involved indicates a strong implication that the Legislature intended the reimbursement for elected and appointed officials as defined in Section 10 of LB 734 to be the same as that for other officials addressed in Neb. Rev. Stat. § 81-1176. Therefore, it is our determination that LB 734 adopts, by reference, the subsequent amendments which LB 697 made to Neb. Rev. Stat. § 81-1176. Accordingly, the allowable mileage reimbursement rate for school board members and employees of schools is the rate established by DAS (currently 27.5 cents per mile).

Sincerely,



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