STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#93073

NO.
STATE OF NEBRASKA
OFFICIAL
SEP 8 1993
DEPT. OF JUSTICE

DATE: September 7, 1993

SUBJECT: Whether members of the board of directors of a public power district can review information concerning registered bonds issued by the district in light of *Neb. Rev. Stat.* § 10-141 (1991).

REQUESTED BY: Senator Chris Beutler
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

In your opinion request letter, you state that, under *Neb. Rev. Stat.* § 10-141 (1991), records of registered bonds issued by a public power district in Nebraska may not be fully accessible to the district's board of directors, and you are apparently considering drafting some legislation which would repeal that statute. However, you also state that *Neb. Rev. Stat.* § 70-622 (1990) seems to allow district directors access to the records of registered bonds as a means of accountability, and you have, therefore, requested an opinion of this office to determine if repeal legislation for Section 10-141 is necessary. Specifically, you ask if a director of a public power district has access to information concerning registered bonds issued by the district under Section 70-622, and, in particular, you wish to know if that statute allows directors to see records pertaining to interest payments made to bond holders including the names of the bond holders and the amounts paid to them. We believe that directors of a public power district should be allowed to see the bond records in question, but not necessarily as a result of Section 70-622.

Section 10-141 is part of a group of statutes dealing with the fully registered bonds issued by various public entities which were enacted as a result of LB 421 passed by the Legislature in 1983. Section 10-141 provides:

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> The records of ownership of fully registered bonds maintained by a registrar shall not be deemed to be public records and shall be available for inspection solely pursuant to a court order or a subpoena of any governmental agency having jurisdiction to issue such subpoena or in accordance with the bond ordinance governing the fully registered bonds.

On the other hand, Section 70-622, a part of the statutes dealing specifically with public power districts states, in pertinent part:

> The board of directors [of the power district] shall cause to be kept accurate minutes of their meetings and accurate records and books of account, conforming to approved methods of bookkeeping, clearly setting out and reflecting the entire operation, management, and business of the district. . . . Said books and records shall at reasonable business hours be open to public inspection.

Your opinion request goes to the effect of the latter statute upon the provisions of Section 10-141.

We do not believe that Section 70-622 can be read to require access to bond registration information for power district board members. First of all, Section 70-622 does not even deal with access to records by a power district board. Rather, it requires the members of such a board to keep adequate business records and to provide access to those records generally to the public. More importantly, special provisions of a statute in regard to a particular subject will prevail over general provisions in the same or other statutes so far as there is a conflict. ***Glockel v. State Farm Mut. Auto. Ins. Co.***, 219 Neb. 222, 361 N.W.2d 559 (1985). Section 70-622 generally provides that the business records of a public power district should be open to the public, while Section 10-141 specifically prohibits public access to bond registration records including those of a public power district. It seems to us that the specific would control over the general in this instance, and that Section 70-622 cannot be used to authorize access to bond registration records by the members of a power district board. However, while Section 70-622 may not give power district board members access to bond registration information, other circumstances may.

The clear language of Section 10-141 provides that records of ownership of fully registered bonds shall not be ***public records***, and this language along with the legislative history of LB 421 seems to indicate that the prohibition on release of bond registration information was directed at members of the general public who seek such information. For example, at the committee

hearing on LB 421, the attorney who characterized himself as the "primary draftsman" of LB 421 testified concerning the purpose of the confidentiality provision pertaining to bond registration information:

> Well, from the standpoint of bond underwriters, that [disclosure of bond registration information] would be an immediate disclosure of their customer list because each bond, then, would be immediately registered with the bond register, the registration agent, and a competitor could go to the list, then, and immediately find out who that underwriter had sold the bonds to. Now, maybe we don't need to be concerned solely about the business of the underwriters; the other thing is that I'm sure that investors -- when you buy the paper, you know, this is your private ownership. Now, the fact that your ownership might be available for public inspection, for, somebody to go in and simply publish a list of who owned all the bonds of City A, will put kind of a damper on the willingness of a lot of investors to buy the bonds of that city.

Committee Records on LB 78, 88th Neb. Leg., 1st Sess. 9-10 (January 31, 1983).

While bond registration records are, therefore, not public records available to citizens in general under the public records statutes, members of the board of directors of a public power district occupy a different position concerning their district than do members of the general public. Under ***Neb. Rev. Stat. §*** 70-619 (Cum. Supp. 1992) the corporate powers of a public power district are vested in and exercised by the board of directors of that district. As a result, the directors of the power district are the public officers in charge of the district. A public officer is the legal custodian of all papers, books and records pertaining to his or her office, and is responsible for their safekeeping and protection. 76 C.J.S. ***Records*** § 34. On this basis, we believe that it may be argued that the directors of a public power district are actually the legal custodians of the bond registration records for the district. In effect, those registration records are the directors' records. Therefore, the directors of the power district have the right to view those records as a part of their duties associated with the governance of the district, and they do not simply stand with members of the general public with respect to viewing bond registration records in the hands of the bond registrar.

While the analysis set out above appears to us to be the better analysis with regard to your question, we must point out

that other arguments might be made supporting the notion that the current statutes do deny public power district directors access to bond registration information. Therefore, as is the case with most opinion requests concerning the necessity for clarifying or repeal legislation, if you wish to make it entirely clear that the district directors in question should have access to bond registration information, we suggest that clarifying or repeal legislation might indeed be appropriate.

Sincerely yours,

DON STENBERG
Attorney General

Dale A. Comer
Assistant Attorney General

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

Approved by:

Attorney General