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NO.
STATE OF NEBRASKA
OFFICIAL
SEP 29 1993
DEPT. OF JUSTICE

DATE: September 29, 1993

SUBJECT: Public Hearing Requirements for Adoption of Budget Statements by Counties and Other Political Subdivisions

REQUESTED BY: John Breslow, Auditor of Public Accounts

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

This is in response to your request for an opinion of the Attorney General regarding the hearing process for adoption of budgets in accordance with the Nebraska Budget Act.[1] The Nebraska budget Act is comprehensive in nature and establishes procedures and standards for adoption of budget statements by governmental bodies.

PUBLIC HEARING FOR ADOPTION OF BUDGET

The first question you ask is "[W]hat constitutes a public hearing for the adoption of a budget under the Nebraska Budget Act?" A public hearing for purposes of the Act is a hearing conducted by the governing body of a political subdivision in conformity with express statutory purposes and procedures. The

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[1]13-501. Act, how cited. Sections 2-958, 3-504, 12-914, 13-501 to 13-513, 16-702, 16-706, 16-718, 17-702, 17-703, 17-708, 17-711, 17-715, 17-718, 18-1006, 19-1302, 23-132, 23-904, 23-920, 23-3519, 23-3552, 31-513, 35-509, 39-1621, 39-1634, 46-543, 46-544, 51-316, 71-1611, 79-435, 79-1007.02, and 79-2210 may be cited as the Nebraska Budget Act.

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purpose of the Act is set forth in Neb. Rev. Stat. § 13-502 (1991) which in part states:

> (1) The purpose of the Nebraska Budget Act is to require governing bodies of this state to which the act applies to follow prescribed budget practices and procedures and make available to the public pertinent information pertaining to the financial requirements and expectations of such governing bodies so that intelligent and informed support, opposition, criticism, suggestions, or observations can be made by those affected. . . .

The procedure for hearing, including notice of hearing, and for adoption of the budget statement is set forth in the Act. Neb. Rev. Stat. § 13-506 (1991) states:

> Each governing body, after the filing of the proposed budget statement with its secretary or clerk, shall each year conduct a public hearing on such proposed budget statement. Notice of place and time of such hearing, together with a summary of the proposed budget statement, shall be published at least five days prior to the date set for hearing, in a newspaper of general circulation within the governing body's jurisdiction or by direct mailing of the notice to each resident within the community; ***Provided***, that when the total operating budget, not including reserves, does not exceed ten thousand dollars per year, the proposed budget summary may be posted at the governing body's principal headquarters. After such hearing, the proposed budget statement shall be adopted, or amended and adopted as amended, and a written record shall be kept of such hearing. The amount to be received from taxation shall be certified to the levying board after the proposed budget statement is adopted, or is amended and adopted as amended, and if the levying board shall represent more than one county, a member or a representative of the governing board shall appear and present its budget at the hearing of each county in which is located a major area of the county affected by its budget. If the adopted budget statement reflects a change from that shown in the published proposed budget statement, a summary of such changes shall be published within twenty days after its adoption in the manner provided in this section, but without provision for hearing, setting forth the items changed and the reasons for such changes.

In applying the statutory purposes of Act, we believe that the term "public hearing" as used in the statute connotes affording interested persons the opportunity to appear and express their views regarding the proposed budget statement.

The Nebraska Supreme Court, in ***Willms v. Nebraska City Airport Authority***, 193 Neb. 567, 228 N.W.2d 276 (1975), reviewed the procedures conducted by a governmental body in adopting its budget and concluded that a budget adopted without full compliance with the requirements of the Nebraska Budget Act is void and may be set aside. Under the facts of the case, the governing body of the airport authority did not conduct a hearing for adoption of its budget. In affirming the decision of the District Court setting aside the budget statement, the Court construed the purpose of the Act and stated:

> The main purpose of the Nebraska Budget Act in requiring a public budget is to guarantee the right to attempt to persuade (sic) a taxing body not to levy a tax for an unwanted project. The appearance of citizens before a meeting of the Nebraska City Council would not accomplish that purpose, and the airport authority board should not have bypassed the clear requirements of the statute in that regard. The spirit and purpose of the Nebraska Budget Act was not carried out.

(Emphasis added). *Id.* at 577, 228 N.W.2d at 282.

The related question you ask is whether a particular hearing for adoption of the budget statement of Harlan County, Nebraska conducted on August 24, 1993 constitutes a public hearing for purposes of the Budget Act. In connection with this question,you have submitted a partial copy of a letter which in generalized fashion describes the public hearing that was conducted. The question you appear to ask is not whether a public hearing was conducted but whether the hearing that was conducted was sufficient or adequate to satisfy the purposes and requirements of the Budget Act. We point out this question is highly factual in nature. We cannot render any conclusion or opinion concerning the adequacy of a hearing conducted by the Harlan County Board of Commissioners based on the limited information you have provided. However, it appears that the public hearing was conducted for the purpose of adopting the budget statement and that sufficient notice of hearing was provided.

**ENFORCEMENT OF PUBLIC HEARINGS
FOR THE ADOPTION OF BUDGET STATEMENTS**

You further inquire "[W]ho is responsible for the enforcement of public budget hearings?" Initially, the governing body, board of county commissioners, is responsible for enforcement of the hearing process since the board is responsible for the conduct of the hearing and for adoption of the budget statement. The county attorney is the legal representative of the board in matters in which the "county is a party or interested." *See* Neb. Rev. Stat. § 23-1201 (1991).

For the most part, budgetary matters and issues of political subdivisions and other public bodies are local matters and are resolved at that level. Local taxpayers and residents affected by the action taken by a governing body are the parties having a direct and real interest in the proceedings and actions taken. The Budget Act expressly authorizes a specific remedy for enforcement of provisions of the Act for local taxpayers who would be impacted by a tax resulting from action taken by the county board. Neb. Rev. Stat. § 13-512 (Cum. Supp. 1992) in material part states:

> A taxpayer upon whom a tax will be imposed as a result of the action of a governing body in adopting a budget statement may contest the validity of the budget statement adopted by the governing body by filing an action in the district court in which the governing body is situated. <u>Such action shall be based either upon a violation of or a failure to comply with the provisions of the Nebraska Budget Act by the governing body. In response to such action, the governing body shall be required to show cause why the budget statement should not be ordered set aside, modified, or changed</u>. The action shall be tried to the court without a jury and shall be given priority by the district court over other pending civil litigation, and by the appellate court an appeal, to the extent possible and feasible to expedite a decision. <u>Such action shall be filed within thirty days after the adopted budget is required to be filed by the governing body with the levying board</u>. . . .

(Emphasis added).

Accordingly, we believe that public officials who are members of the governing body have the initial and direct responsibility for implementation and enforcement of the procedures for adoption of budget statements. Taxpayers who are impacted by the tax to be levied by the action of the governing body who believe that the

budget process was invalid may avail themselves of the legal remedy provided in § 13-512 for a direct action to district court.

You also ask whether the Auditor of Public Accounts has the "legal right to reject a budget adopted without a public hearing, or require the political subdivision to hold a public hearing as a correction of a material error?" This Office has previously advised the Auditor of Public Accounts that a budget statement which includes material errors may be refused for filing by the Auditor of Public Accounts. *See* Op. Att'y Gen. No. 91062, July 29, 1991. The Auditor of Public Accounts may require that a hearing be conducted before the budget statement is accepted for filing. We recommend that the hearing process be established as a minimum requirement by rule and regulation to facilitate refusal of budget statements if a public hearing was not conducted.

Neb. Rev. Stat. § 84-304.01 (1987) in part states:

> It shall be the duty of the Auditor of Public Accounts to establish, by rule and regulation, minimum standards applicable to all audit, financial or accounting reports or copies of such reports required to be filed with the Auditor of Public Accounts by any political subdivision of the State of Nebraska. . . .

We believe that the adoption of a budget statement without conducting a public hearing for that purpose may constitute a material error and serve as a basis for the Auditor to not accept a budget statement. Generally, proof of publication of notice of public hearing and a certification that the public hearing was conducted may serve to satisfy the minimum standard requirements, if established, for public hearing for adoption of budget statements.

In summary, it is our conclusion that a public hearing for purposes of the Nebraska Budget Act should afford interested persons an opportunity to express their views regarding budget issues. Taxpayers impacted by the action taken by the governing body have a specific remedy provided by law to contest the validity of a budget statement. The Auditor of Public Accounts may refuse to accept for filing a budget statement adopted without public hearing.

Sincerely yours,

DON STENBERG
Attorney General

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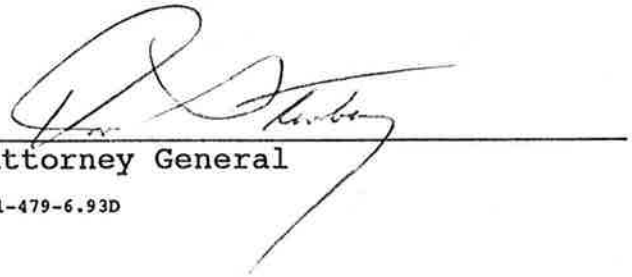
Approved By:



Attorney General

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