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NO.
STATE OF NEBRASKA
OFFICIAL
OCT 27 1993
DEPT. OF JUSTICE

DATE: October 22, 1993

SUBJECT: LB 203 - Effective Date of Change in Waste Reduction and Recycling Fee.

REQUESTED BY: Senator Thomas R. Horgan
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion regarding the effective date of the change in the waste reduction and recycling fee under § 21 of 1993 Neb. Laws, LB 203. You indicate that, based on our response to your question, you may introduce amendatory or clarifying legislation.

In 1990, the Legislature enacted the Waste Reduction and Recycling Act. 1990 Neb. Laws, LB 163, §§ 1-7 (*codified at* Neb. Rev. Stat. §§ 81-15,159 to 81-15,165 (Cum. Supp. 1992)). Section 81-15,163 provided for the collection of an annual fee on businesses engaged in retail sales of tangible personal property. Businesses with retail sales of at lease thirty thousand dollars and not more than one hundred ninety-nine thousand dollars were required to pay a fee of twenty-five dollars; businesses with retail sales of more than one hundred ninety-nine thousand dollars were required to pay a fee of fifty dollars. Section 81-15,164 provided that these fees were "to be collected [by the Department of Revenue] in the same manner as the litter fee under the Nebraska Litter Reduction and Recycling Act, including provisions of the act relating to due dates, interest, penalties, and collection

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procedures." The Nebraska Litter Reduction and Recycling Act provides that the annual litter fee is "due on or before October 1 each year, based upon the gross proceeds [of manufacturers or retailers] for the immediately preceding July 1 to June 30 period." Neb. Rev. Stat. §§ 81-1559 and 81-1560.01 (1987).

Section 21 of LB 203 eliminates the fifty dollar fee previously contained in § 81-15,163, and imposes a flat annual fee of twenty-five dollars on all businesses with retail sales of tangible personal property of thirty thousand dollars or more. Section 24 of LB 203 provides that § 21 became "operative on July 1, 1993." Section 81-15,164(2), which provides for the collection of the waste reduction and recycling fee in the same manner as the litter fee, remains in effect. Section 22 of LB 203, which eliminates this provision, will not become operative until December 1, 1994, and then only if proceeds received from the litter fee exceed a specified amount. LB 203, § 24.

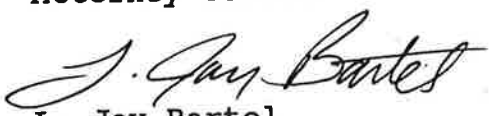
Section 21 of LB 203 did not become operative until July 1, 1993. The amount of the waste reduction and recycling fee for the annual period from July 1, 1992, to June 30, 1993, must therefore be determined under the statute in effect for this period, which, as noted, requires payment by retailers of either a twenty-five dollar or fifty dollar fee, depending upon the retailer's volume of retail sales. The fact that the fee is reported and paid in October, after the effective date of § 21 of LB 203, does not alter this conclusion, as liability for the fee is determined under the statute in effect at the end of the annual period for which the fee was imposed, which was prior to the operative date of the amendment. The flat fee of twenty-five dollars does not, under the plain terms of the legislation, go into effect until the next annual reporting period.

We have reviewed the legislative history of LB 203, and recognize that it contains statements indicating that the fifty dollar fee would be eliminated effective July 1, 1993. ***E.g.***, Floor Debate on LB 203, 93rd Neb. Leg., 1st Sess. 4117, 4127-28 (April 29, 1993) (Statement of Sen. Beutler). While this could be construed as indicating a legislative intent to eliminate liability for payment of the fifty dollar fee for the annual period ending prior to the effective date of § 21 of bill, but not paid until after the effective date, the bill itself does not evince such an intent. Further, while legislative history may provide guidance in the construction of an ambiguous statute, "[i]t cannot ordinarily serve to `import an intent into legislation devoid of language fit to express it.'" ***Norden Laboratories, Inc. v. County Bd. of Equal.***, 189 Neb. 437, 440, 203 N.W.2d 152 (1973). In this instance, we believe the language of the bill, and, in particular,

the effective dates established by the Legislature, necessitates our conclusion that the fifty dollar fee is not eliminated for the annual period ending prior to the operative date of § 21 of the act.

Very truly yours,

DON STENBERG
Attorney General



L. Jay Bartel
Assistant Attorney General

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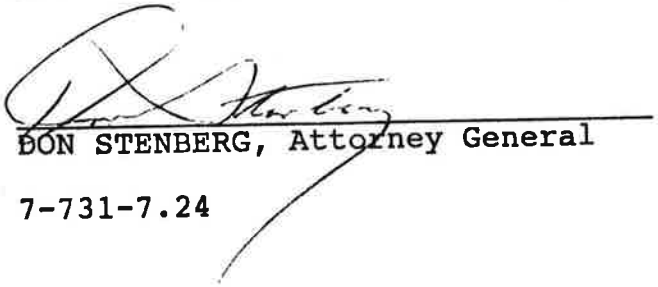

DON STENBERG, Attorney General

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