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

#93102

NO.
STATE OF NEBRASKA
OFFICIAL
DEC 17 1993
DEPT. OF JUSTICE

DATE: December 9, 1993

SUBJECT: Whether Retail Establishments Without Interstate Dealings are "Qualifying Businesses" Under the Local Option Municipal Economic Development Act, Neb. Rev. Stat. §§ 18-2701 to 18-2738 (1991 & 1993 Neb. Laws)

REQUESTED BY: Senator Jim D. Cudaback
Nebraska State Legislature

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

In order to avoid introducing unnecessary legislation, you have asked whether local retail establishments, "regardless of interstate commerce dealings or holdings," are qualifying businesses under the Local Option Municipal Economic Development Act, Neb. Rev. Stat. §§ 18-2701 to 18-2738 (1991 & 1993 Neb. Laws) (Act). We interpret your question to mean whether local retail establishments which do not have interstate dealings or holdings are eligible for financial assistance under the Act.

Aimed at providing incentives for businesses to expand or locate in Nebraska municipalities, the Act authorizes financial assistance from local sources of revenue to qualifying businesses. §§ 18-2702, -2705, -2713. Qualifying businesses are defined as follows:

> Qualifying business shall mean any corporation, partnership, limited liability company, or sole proprietorship which derives it principal source of income from any of the following: The manufacture of

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Laurie Smith Camp
Delores N. Coe-Barbee
Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce N. Harper
Mary L. Hewitt
Lauren Lee Hill
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Donald A. Kohtz
Joseph P. Loudon
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Harold I. Mosher
Fredrick F. Neid
Marie C. Pawol
Kenneth W. Payne
Paul N. Potadle
Jan E. Rempe
James H. Spears
Mark D. Starr
John R. Thompson
Barry Waid
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

Printed with soy ink on recycled paper

> articles of commerce; the conduct of research and development; the processing, storage, transport, or sale of goods or commodities which are sold or traded in interstate commerce; the sale of services in interstate commerce; headquarters facilities relating to eligible activities as listed in this section; telecommunications activities; or tourism-related activities. In cities with a population of two thousand five hundred inhabitants or less, a business shall be a qualifying business even though it derives its principal source of income from activities other than those set out in this section.
>
> . . . .
>
> A qualifying business need not be located within the territorial boundaries of the city from which it is or will be receiving financial assistance.

§ 18-2709 (quoted in relevant part).

> "A statute is not to be read as if open to construction as a matter of course. Where the words of a statute are plain, direct, and unambiguous, no interpretation is needed to ascertain the meaning. In the absence of anything to indicate the contrary, words must be given their ordinary meaning. It is not within the province of a court to read a meaning into a statute that is not warranted by the legislative language. Neither is it within the province of a court to read anything plain, direct and unambiguous out of a statute."

Gillam v. Firestone Tire & Rubber Co., 241 Neb. 414, 418, 489 N.W.2d 289, 292 (1992) (quoting *County of Douglas v. Board of Regents*, 210 Neb. 573, 577-78, 316 N.W.2d 62,65 (1982)). *See also Weimer v. Amen*, 235 Neb. 287, 295-96, 455 N.W.2d 145, 152 (1990).

The plain meaning of section 18-2709 indicates that local retail establishments which do not deal in interstate commerce would be qualifying businesses under the Act only if they were corporations, partnerships, limited liability companies, or sole proprietorships which derive their principal source of income from manufacturing articles of commerce, conducting research and development, performing telecommunications or tourism-related activities, or serving as the headquarters for facilities performing any of these activities. If the local retail establishment at issue operates in a city with a population of

2,500 or less, the establishment would be a qualifying business under the Act regardless of how it derives its principal source of income.

If you wish to include in the Act's definition of "qualifying business" more local retail establishments than those which derive their principal source of income from the above-listed activities, you should consider introducing legislation to that effect. Since meaning that is not warranted by legislative language will not be read into a statute, it is necessary to clarify section 18-2709 in this regard.

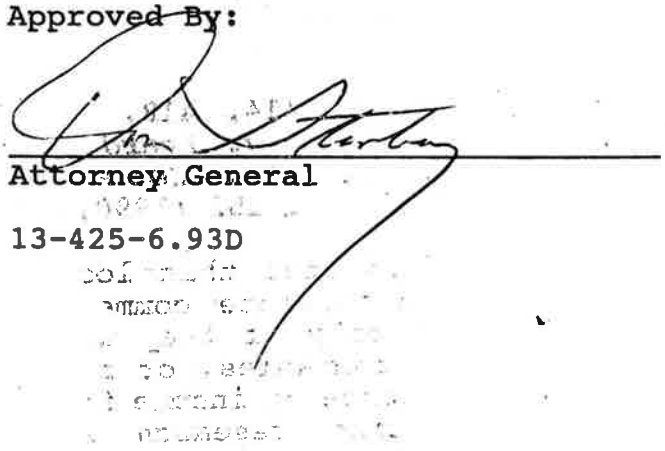
Sincerely,

DON STENBERG
Attorney General

Jan E. Rempe
Assistant Attorney General

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

Approved By:



Attorney General

13-425-6.93D