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NO.
STATE OF NEBRASKA
OFFICIAL
FEB 15 1995
DEPT. OF JUSTICE

DATE: February 14, 1995

SUBJECT: Power of Natural Resources Districts to acquire abandoned railroad right-of-way.

REQUESTED BY: Senator Carol Hudkins
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Warren D. Lichty, Assistant Attorney General

Your inquiry has to do with LB 258, 94th Legislature, First Session (1995), and particularly with regard to the effect that bill has in amending Neb. Rev. Stat. § 28-2801 (1994). That bill indicates an intention to provide powers and duties relating to railroad rights-of-way and recreational trails. In section 1, the bill gives the Game and Parks Commission power to acquire abandoned railroad right-of-way by gift, devise, or purchase.

Section 4 of the bill amends Neb. Rev. Stat. § 81-2801 (1994), which act, generally, prohibits agencies of the State from purchasing, leasing or acquiring real estate from a railroad on rural right-of-way which has been abandoned. The amendment adds the Game and Parks Commission to the exceptions to that prohibition.

Your question is whether a Natural Resources District (NRD) is, by this statute, prevented from accepting abandoned railroad land without approval by the legislature. The 1988 case, ***Catherland Reclamation District v. Lower Platte North Natural Resources District***, 230 Neb. 580, 433 N.W.2d 161 (1988), holds, at page 585, that an NRD is a political subdivision, and that it has only that power delegated to it by the legislature. It also states that a grant of power to a political subdivision is strictly construed. In ***Dawson v. Papio Natural Resources District***, 206 Neb. 225, 291 N.W.2d 730 (1980), an NRD was referred to as a governmental subdivision.

As to whether NRDs have the authority, generally, to acquire real estate, we believe that, while the grant is not in clearest

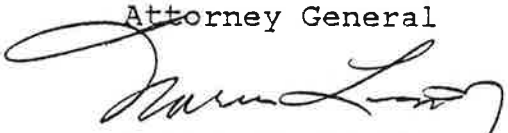
language, they do. Neb. Rev. Stat. § 2-3233 (1991) authorizes a district "to acquire by grant, purchase, bequest, devise, or lease and to hold and use waterworks, personal property, and interests or title in real property. . . ." In addition, Neb. Rev. Stat. § 2-3228 (1991) gives districts the power and authority to "Receive and accept donations, gifts, grants, bequests, appropriations, or other contributions in money, services, materials, or otherwise. . . from any person as defined in section 49-801. . . ." Neb. Rev. Stat. § 49-801 (1993) defines person as including "bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations." Also, Neb. Rev. Stat. § 2-3229 (1991) defines the purposes of a district so as to include development and management of recreational and park facilities. We believe this definition is broad enough to include recreational trails.

This leads to the conclusion that an NRD would have the power to acquire real estate and that this would include abandoned railroad right-of-way unless Neb. Rev. Stat. § 81-2801 (1994) prohibits it. We believe the language of the first sentence of that section is clear and not subject to interpretation. All agencies of the State of Nebraska, except the Department of Roads, and now, with the amendment, the Game and Parks Commission, are so prohibited.

The only question remaining then is whether an NRD is an "agency of this State." Certainly, the NRDs were set up by authority of the legislature and Neb. Rev. Stat. § 2-3201 (1991) declares an intent that such districts encompass all the areas of the State. However, as discussed above, NRDs are political subdivisions, and are not "agencies of the State." Consequently, § 81-2801 does not apply to NRDs.

Sincerely,

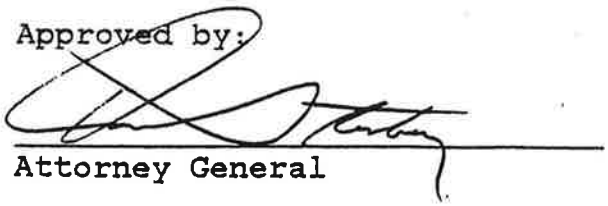
DON STENBERG
Attorney General



Warren D. Lichty
Assistant Attorney General

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

Approved by:



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