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NE STATE OF NEBRASKA
OFFICIAL
APR 14 1995
DEPT. OF JUSTICE

DATE: April 11, 1995

SUBJECT: Enforcement of Political Subdivision Budget Limitations in Neb. Rev. Stat. §§ 77-3437 to -4441 (Cum. Supp. 1994) and 79-3814 to -3821 (1994).

REQUESTED BY: M. Berri Balka, State Tax Commissioner

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

You have requested our opinion regarding what remedies are available if political subdivisions have not complied with the budget limitations imposed under Neb. Rev. Stat. §§ 77-3437 to -3441 (Cum. Supp. 1994) and 79-3814 to -3821 (1994). In addition, you have asked who, if such limitations have been violated, is responsible for enforcement of such violations.

At the outset, we note that, while your request refers to potential violations of these budget limits "for fiscal year 1994-95", you have provided no information, nor given any other indication, that you believe any political subdivision has failed to comply with these statutory limits for that fiscal year. Nor do you refer to any particular manner in which such limits may have allegedly been violated. As such, it is difficult for us to address with specificity any particular concerns you may have with respect to these issues. We will, however, in the absence of such specificity, endeavor to provide a general response to your questions.

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I. The Budget Limitation Acts.

Your request makes reference to two separate sets of statutory provisions setting limitations on political subdivisions relating to the amounts to be raised by such subdivisions from property taxes for certain purposes. The first of these is contained in Neb. Rev. Stat. §§ 77-3437 to -3441 (Cum. Supp. 1994). The limits established in these provision apply to the "[g]overning body" of political subdivisions, as defined in Neb. Rev. Stat. § 13-503 (Cum. Supp. 1994), but exclude any "school board or board of education of a school district;. . . ." Neb. Rev. Stat. § 77-3437(6). The other statutes establish budget limitations applicable to school districts. Neb. Rev. Stat. §§ 79-3814 to -3821 (Supp. 1994).

With respect to the budget limitations imposed under §§ 77-3437 to -3441, "no governing body shall adopt a budget statement pursuant to section 13-506 or pursuant to the charter or ordinance of a city with a home rule charter in which the anticipated aggregate receipts from property taxes for any fiscal year exceed the anticipated aggregate receipts from property taxes for the prior fiscal year. . . ." Neb. Rev. Stat. § 77-3438(1). Exceptions are provided for budgets increases based on: (1) "purchase or repair of emergency equipment or vehicles" (§ 77-3408.01); (2) vote of majority of the governing body (§ 77-3429); and/or (3) vote of the majority of electors at a special election (§ 77-2430). "Property taxes" is defined in § 77-3437(8) to "mean all revenue budgeted to be received from the levy of taxes on property and from the motor vehicle tax, . . . but shall not include. . . (b) revenue received as a result of growth in the current year or growth in the previous year if such growth was not excluded from the property taxes budgeted in the prior fiscal years,. . . ." § 77-3437(8). "Growth" is in turn defined, in part, to exclude "a change in valuation of a class or a subclass of property,. . . ." § 77-3437(7)(i).

Section 79-3814(1) provides, in part, that: "Except as provided in subsection (2) of this section, . . ., no [school] district shall increase its general fund budget of expenditures more than the applicable allowable growth percentage. The Legislature shall annually establish an allowable growth range. . . ."[1] Subsection (2) of § 79-3814 provides: "Notwithstanding any of the provisions of subsection (1) of this section and sections 79-3815 to 79-3821 for budgets adopted for fiscal years 1991-92 through 1994-95, the general fund budget of expenditures of each district shall not exceed the general fund budget of expenditures adopted for the immediately preceding school fiscal year unless a district, pursuant to the procedures specified in subsection (1) of

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[1] The "basic allowable growth rate for general fund expenditures" (other than special education) is "four percent" and the "allowable growth range" is "from four percent to six and on-half percent." Neb. Rev. Stat. § 79-3816 (1994).

section 79-3820, by an affirmative vote of seventy-five percent of the school board, votes to exceed such limitation, in which case the budget limitations and all other provisions of subsection (1) of this section and sections 79-3815 to 70-3821 shall apply."

II. Enforcement of the Budget Limitation Acts.

Your questions, of course, relate to the enforcement of the budget limitations on political subdivisions established under the above-cited statutes, and what remedies are available for potential violations. In this regard, we note that, for purposes of your request, none of the statutory provisions establish any mechanism by which you, as Tax Commissioner, have any authority to enforce these provisions. Nor do the statutes contemplate that, other than as noted below with respect to the State Auditor's authority to reject budget statements for noncompliance (or, in the case of school districts, action by the Department of Education based on noncompliance with the Nebraska Budget Act), any other state official has any authority to enforce violations of the budget limits imposed by these acts. And, as to fiscal year 1994-95, the enforcement mechanisms available to state officials are not applicable.

As to the budget limitations imposed on political subdivisions (other than school districts) under §§ 77-3437 to -3441, the operative statute precludes, with specified exceptions, the subdivision from "adopt[ing] a budget statement" under "which the anticipated aggregate receipts from property taxes for the fiscal year exceed the anticipated aggregate receipts from property taxes for the prior fiscal year. . . ." § 77-3438(1). "Adopted budget statement" is defined in § 77-3437(4) to "have the definition found in section 13-503". Neb. Rev. Stat. § 77-3437(4) (Cum. Supp. 1994).

The "adopted budget statement" is the "proposed budget statement which has been adopted or amended and adopted as provided in section 13-506" of the Nebraska Budget Act. Neb. Rev. Stat. § 13-503(8) (Cum. Supp. 1994). Pursuant to Neb. Rev. Stat. § 13-508, each "governing body" is required to "file with and certify to the levying board on or before September 10 of each year and file with the auditor [the Auditor of Public Accounts (State Auditor)] a copy of the adopted budget statement. . .which complies with sections 77-3438 to 77-3440. . .,, together with the amount of the tax to be levied." (emphasis added).

In Op. Att'y Gen. No. 91062 (July 30, 1991), we stated that § 13-508 "requires that a copy of the adopted budget statement be filed with the auditor," and that Neb. Rev. Stat. § 13-504(3) "requires the correction of any material errors detected by the Auditor of Public Accounts." *Id.* at 1-2. We concluded "that the auditor may reject, or refuse to accept for filing, budget statements which include material errors which [are] not corrected by the political subdivisions." *Id.* at 2. The adoption of a budget statement which violates the limits imposed under §§ 77-3438 to -

3440 would constitute a "material error" under the Nebraska Budget Act.

In our prior opinion, we also addressed the authority of the State Auditor to "enforce compliance with standards [under the Nebraska Budget Act], and, specifically, correction of errors in the budget statement." We concluded that the only enforcement mechanism available to the Auditor was to refuse to accept for filing an adopted budget statement for failure by a political subdivision to correct material errors. We stated "that the Auditor of Public Accounts may not directly institute legal action against governing bodies of political subdivisions to compel compliance with the Nebraska Budget Act." *Id.* at 3. We further noted:

> While remedial action by the auditor is generally limited to refusal to accept the budget document for filing, this is a formidable and effective act. Essentially, if the budget statement were not filed, the budget would not be in compliance with the Nebraska Budget Act and thereby susceptible to legal challenge. A budget statement which fails to comply with the Act, and any associated tax levy, may be set aside in whole or in part.

Id.

Our previous opinion further pointed out that "[a] taxpayer upon whom a tax would be imposed may bring an action to contest the validity of the budget statement." *Id.* In this regard, we noted the provisions of Neb. Rev. Stat. § 13-512 (Cum. Supp. 1994), which provides, in part:

> 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 of the county in which the governing body is situated. Such action shall be based either upon a violation of or a failure to comply with the provisions and requirements of the Nebraska Budget Act by the governing body. . . . Such action shall be filed within thirty days after the adopted budget statement is required to be filed by the governing body with the levying board.

As to budget statements adopted for fiscal year 1994-95, the thirty day time limit for a taxpayer suit under § 13-512 has passed. This section does provide, however, that "[t]he remedy provided in this section shall not be exclusive but shall be in addition to any other remedy provided by law." We express no opinion as to whether an affected taxpayer could bring a legal action to challenge a budget statement for this period which allegedly failed to comply with the limitations imposed under §§

77-3437 to -3440 at this time. For purposes of responding to your request, it is sufficient to conclude that neither you, nor the Auditor, has any enforcement authority with respect to budget statements adopted for this period which may have been in violation of the limitations imposed by these provisions.

With regard to the budget limitations imposed on school districts under §§ 79-3814 to -3821, we note that § 79-3815(1) provides that "[t]he Auditor of Public Accounts shall make necessary changes in the budget documents for districts to effectuate the budget limitations imposed pursuant to sections 79-3814 to 79-3821." Subsection (2) further provides for enforcement of these limitations as follows:

> If a school district fails to submit to the department [the Department of Education] or the auditor the budget documents required pursuant to subsection (1) of this section by the date established in section 13-508[2] or fails to make any corrections of errors in the documents pursuant to section 13-504, the commissioner, upon notification from the auditor or upon his or her own knowledge that the required budget documents and any required corrections of errors from any school district have not been properly been filed in accordance with the Nebraska Budget Act and after notice to the district and an opportunity to be heard, shall direct that any state aid granted pursuant to the Tax Equity and Educational Opportunities Support Act shall be withheld until such time as the required budget documents or corrections of errors are received by the department. In addition, the commissioner shall notify the county superintendent to direct the county treasurer to withhold all school money belonging to the school district until such time as the commissioner notifies the county superintendent of receipt of the required budget documents or corrections of errors. The county treasurer shall withhold such money.

Apart from these enforcement provisions, we again note that taxpayer actions challenging the validity of budget statements are authorized by Neb. Rev. Stat. § 13-512 (Cum. Supp. 1994). While the thirty day time for filing such an action imposed under the statute has passed as to budgets for 1994-95, the statute does, as noted above, provide that the remedy afforded to taxpayers is "not exclusive". Again, we express no view as to whether a taxpayer action challenging alleged violations of the budget limitations imposed under §§ 79-3814 to -3821 could now be maintained. It is enough, for purposes of responding to your request, to note that, as to school district budgets for 1994-95, the enforcement of these

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[2] Section 13-508 requires the governing body to file with the State Auditor a copy of "the adopted budget statement which complies with sections . . . 79-3814 to -3821. . . ."

limitations by the Department of Education or the State Auditor contemplated by § 79-3815 is not applicable. [3]

Finally, while not mentioned in your request, we point out the potential impact of the so-called "windfall" or "rollback" provision in Neb. Rev. Stat. § 77-1602 (1990). This section provides, in part:

> When the final actual valuation, as certified by the State Board of Equalization and Assessment pursuant to section 77-509, of a political subdivision increases over the immediately preceding year for reasons other than new construction, additions of improvements, or additions of omitted property, the property tax levy of the political subdivision shall be reduced proportionately to the increase in actual valuation. The purpose of this section is to as nearly as possible maintain the revenue derived from property taxes at the same amount as it would have been had no such increase in the actual value occurred.

This section further provides, however, that "[n]othing in this section shall be construed to prohibit an increase in property taxes levied if such increase is due to a budget increase by a political subdivision." Neb. Rev. Stat. § 77-1602.

With respect to enforcement of the "windfall" or "rollback" provision in § 77-1602, an affected taxpayer could conceivably challenge the taxation of their property if this section were violated. ***See Asarco, Inc. v. McHenry,*** 679 S.W.2d 863 (Mo. 1984) (action by taxpayer alleging violation of Missouri property tax rollback statute). We note, however, that the "windfall" or "rollback" provision in § 77-1602 does not preclude increases in property taxes resulting from budget increases by political subdivisions.

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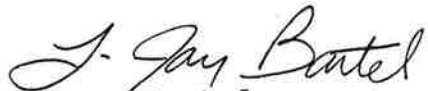
[3] Section 79-3815(2) provides that the Commissioner of Education, based on his or her own knowledge <u>or</u> after notification by the State Auditor of a school district's failure to submit a budget or to make corrections of errors, may withhold state aid after notice is provided the district until a budget is filed or the errors corrected. While the statute could be construed as not placing a temporal restriction on the Commissioner's exercise of this authority, the statute authorizes the exercise of such power where the required budget documents are not filed and where "any required corrections of errors from any school district have not been properly filed in accordance with the Nebraska Budget Act. . . ." § 79-3815(2). Thus, as to budgets for 1994-95 which have been filed and accepted under the Nebraska Budget Act, neither the Commissioner nor the State Auditor would have authority to act under the statute at this time.

III. Conclusion.

In sum, for the reasons stated above, we conclude that, as Tax Commissioner, you have no authority to enforce the budget limitations imposed on political subdivisions under §§ 77-3437 to -3441 or 79-3814 to -3821. Nor do the statutes contemplate that, other than as noted above with respect to the State Auditor's authority to reject budget statements for noncompliance (or, in the case of school districts, action by the Department of Education for noncompliance with the Nebraska Budget Act), any other state official has authority to enforce potential violations of the budget limits imposed by these acts. And, as to budgets adopted for the 1994-95 fiscal year, any enforcement authority by these officials has expired. An affected taxpayer could have challenged a budget statement under Neb. Rev. Stat. § 13-512 (Cum. Supp. 1994), but the time for bringing such an action has passed. We decline to speculate as to whether a taxpayer could now challenge any alleged violation of these provisions.

Very truly yours,

DON STENBERG
Attorney General



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cc: John Breslow
State Auditor

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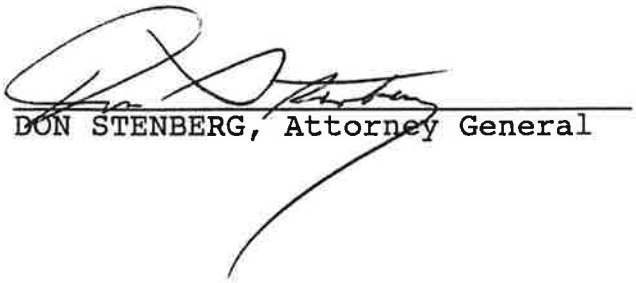

DON STENBERG, Attorney General