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NO.
STATE OF NEBRASKA
OFFICIAL
APR 19 1995
DEPT. OF JUSTICE

DATE: April 17, 1995

SUBJECT: Proposed Amendment to LB 613; Does the Term "Municipality" Used in *Neb. Rev. Stat.* § 77-3439 (Cum. Supp. 1994) Include Townships for Purposes of the Exception to the Budget Lid Contained in That Statute?

REQUESTED BY: Senator M. L. Dierks
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

Subsections (3) and (4) of *Neb. Rev. Stat.* § 77-3439 (Cum. Supp. 1994) state as follows:

> (3) In addition to the increase [in property taxes] permitted by subsection (1) of this section, a municipality or county may increase the anticipated aggregate receipts from property taxes by the amount necessary to pay for accessibility barrier elimination project costs upon an affirmative vote of the governing body. Such a vote shall be taken at a public meeting of the governing body following (a) a hearing called pursuant to subsection (1) of this section at which there is an opportunity for testimony on the increase proposed under this subsection or (b) a special public hearing called for the purpose of receiving testimony on the increase proposed under this subsection.

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> (4) In addition to the increase [in property taxes] permitted by subsection (1) of this section, a municipality or county may increase the anticipated aggregate receipts from property taxes by the amount necessary to pay for repairs to infrastructure damaged by a natural disaster which is declared a natural emergency pursuant to the Nebraska Disaster and Civil Defense Act of 1973 not reimbursed by state or federal emergency funds upon an affirmative vote of a majority of the governing body. Such a vote shall be taken at a public meeting of the governing body following (a) a hearing called pursuant to subsection (1) of this section at which there is an opportunity for testimony on the increase proposed under this subsection or (b) a special public hearing called for the purpose of receiving testimony on the increase proposed under this subsection.

You have asked for our opinion as to ". . . whether a township is included within the meaning of a municipality for purposes of the exception to the budget lid provided in Subsections 3 & 4 of Section 77-3439?" You are apparently contemplating introduction of an amendment to LB 613 which would specifically include townships in the budget lid exceptions contained in subsections (3) and (4) of § 77-3439 should we conclude that the term "municipality" in those subsections does not embrace townships. In our view, "municipality" as it is used in subsections (3) and (4) of § 77-3439 does not include townships.

Neb. Rev. Stat. §§ 77-3437 through 77-3441 (Cum. Supp. 1994) create a lid on the level of property taxes which may be imposed by various governmental subdivisions in the State of Nebraska. Section 77-3437 contains a number of definitions for terms which are used in §§ 77-3437 through 77-3441. However, the word "municipality" is not defined in § 77-3437. Therefore, we must look elsewhere to ascertain what is included within that term.

In ***State v. Cheyenne County***, 127 Neb. 619, 256 N.W. 67 (1934), the Nebraska Supreme Court engaged in the following discussion of the differences between a public corporation and a municipal corporation under Nebraska law:

> Corporations are generally classed as public and private. While the municipality is a public corporation, it does not follow that every public corporation is a municipality. * * *
>
> * * * A municipal corporation is a legal institution formed by charter from sovereign power, erecting a populous community of prescribed area into a body politic and corporate with corporate name and continuous

> succession and for the purpose and with the authority of subordinate self-government and improvement and local administration of affairs of state. The foregoing definition presents the logical and practical view of a municipal corporation. It is a brief formula embracing the essential elements and excluding other kindred bodies called quasi corporations. It expressly includes: The body of individuals; the sanction of the sovereign; the definite public purpose; the necessary powers; the charter; and the primary incidents of name and succession. These are the elements generally recognized as essential to a municipal corporation. ***It impliedly excludes parishes, counties, townships, and districts, which are almost municipalities and yet are deficient in some of the essential attributes of a municipal corporation***; while it expresses the complex nature of the corporation, whereby it acts as a municipium, and also as a local agency for administering and enforcing the laws of the state.

Id at 623, 624, 256 N.W. at 70 (citations omitted) (emphasis added). This language from the ***Cheyenne County*** case indicates that a municipality is generally something separate and apart from a township, and that a township is not a municipality. On the basis of this authority, it appears to us that "municipality" in § 77-3439 would not include a township.

Our determination concerning the inclusion of township within the meaning of "municipality" is supported by the legislative history of LB 220, the bill which added subsections (3) and (4) to § 77-3439 in 1993. The committee statement from the Legislature's Revenue Committee, which considered that bill, summarized the bill's purpose, in part, as follows:

> LB 220 would exempt ***city expenditures for A.D.A. compliance and wage agreements or orders*** from the 0% property tax request lid provided in sections 77-3437 et. seq.

Committee Statement on LB 220, 92nd Neb. Leg., 2nd Sess. (Jan. 28, 1993) (emphasis added). In addition, Senator Landis, the introducer of LB 220, commented on the bill during floor debate, and stated:

> Let me make clear that every tool available under 220 is available to Wayne County ***as it is available to every city or county*** and that allows for growth to be used. That allows for the ADA and the natural disaster.

Floor Debate on LB 220, 92nd Neb. Leg., 2nd Sess. 5384 (May 14, 1993) (Statement of Sen. Landis) (emphasis added). We believe that these references to "city" and "city expenditures" in connection with LB 220 indicate that the bill was intended to deal with municipalities as they were defined in the ***Cheyenne County*** case, and that the bill was not intended to reach townships.

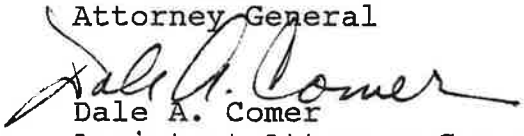
Finally, the other portions of the statutes dealing with local property tax lids support our conclusion that "municipality" as it is used in subsections (3) and (4) of § 77-3439 does not include townships.

While the term "municipality" is not defined in § 77-3437, the term "governing body" is. The latter provision has the same definition as "governing body" in ***Neb. Rev. Stat. §*** 13-503 (Cum. Supp. 1994), and clearly includes townships and town boards within the term "governing body." Subsection (1) of § 77-3439 provides for increases in property taxes by the "governing bodies" of governmental subdivisions in certain instances, while subsections (3) and (4) of the same section provide for increases in property taxes by a "municipality or county" in certain instances. It seems to us that if "municipality or county" was intended to have the same inclusive meaning as "governing body," there would have been no need to use different terms in the various subsections of § 77-3439. As a result, we do not believe that "municipality" in subsections (3) and (4) was intended to include townships.

For these various reasons, it does not appear that a township is included within the meaning of "municipality" for purposes of the exception to the budget lid provided in subsections (3) and (4) of § 77-3439. If you wish to include townships within subsections (3) and (4), you should proceed with your amendment to LB 613.

Sincerely yours,

DON STENBERG
Attorney General



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

Approved by:

Attorney General