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

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

95057

NO. STATE OF NEBRASKA
OFFICIAL
JUL 12 1995
DEPT. OF JUSTICE

DATE: July 7, 1995

SUBJECT: Application of the Requirements of the Nebraska Budget Act to Rural Water Districts

REQUESTED BY: John Breslow, Auditor of Public Accounts

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

You have asked the Attorney General whether rural water districts are "subject to the provisions of the Nebraska Budget Act?" It is our conclusion that rural water districts organized and established in accordance with the provisions of Neb. Rev. Stat. §§ 46-1001 to 46-1026 (1993) are subject to the requirements of the Nebraska Budget Act.[1] As you have noted, this Office has previously rendered the opinion that governmental and political subdivisions of this state are subject to the requirements of the Act unless expressly exempted to give proper effect to the objects and purposes of the Act. See Letter Op. Att'y Gen. No. I92-087 (December 29, 1992).

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[1] Neb. Rev. Stat. § 13-501 (Cum. Supp. 1994) provides: Act, how cited. Sections 2-958, 3-504, 12-914, 13-501 to 13-513, 13-515, 16-702, 16-706, 16-718, 17-702, 17-703, 17-708, 17-711, 17-715, 17-718, 18-1006, 19-1302, 23-132, 23-904, 23-920, 23-3519, 23-3552, 31-513, 35-509, 39-1621, 39-1634, 46-543, 46-544, 51-316, 71-1611, 79-435, 79-1007.02, and 79-2210 shall be known and may be cited as the Nebraska Budget Act.

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RURAL WATER DISTRICTS

Rural water districts were formed pursuant to Neb. Rev. Stat. § 46-1005 (1993) by petition to and upon declaration by county boards that the districts constitute public corporations incorporated as rural water districts. A district constitutes a body politic and corporate upon formation. A board of directors is the governing body of the district and the directors are selected by majority vote of landowners within the district present at the organizational meeting in accordance with the provisions of Neb. Rev. Stat. § 46-1006 (1993). Existing rural water districts were formed prior to June 30, 1972. Neb. Rev. Stat. § 46-1001.01 (1993) provides that no new districts may be organized after that date.

Generally stated, the purposes and functions of the districts are to construct, maintain, and improve water projects and works to provide an adequate water supply for the district. The board of directors of the district is authorized by Neb. Rev. Stat. § 46-1015 (1993) to issue revenue bonds for financing of projects for these purposes. The districts are not empowered to levy taxes and the districts derive their revenue from water use fees periodically set and adjusted by the board. Neb. Rev. Stat. § 46-1018 (1993) in part states, ". . .such board shall annually prepare an estimated budget for the coming year, adjust water rates, if necessary, to produce sufficient revenue required by such budget, cause an annual audit of the district's records and accounts to be made, and make a report on such matters at each annual meeting."

NEBRASKA BUDGET ACT

The purpose of the Nebraska Budget Act ("the Act") is to require governing bodies of the state to follow prescribed budget practices and procedures and to make financial information available to the public. See Neb. Rev. Stat. § 13-502 (Cum. Supp. 1994). For purposes of the Act, the term, "governing body," is defined in Neb. Rev. Stat. § 13-503 (Cum. Supp. 1994) as follows:

> 13-503. **Terms, defined.** For purposes of the Nebraska Budget Act, unless the context otherwise requires:
>
> (1) Governing body shall mean, in the case of a city, the council; in the case of a village, cemetery district, community hospital for two or more adjoining counties, road improvement district, sanitary drainage district, or sanitary and improvement district, the board of trustees; in the case of a county, the county board; in the case of a township,m the town board; in the case of a school district, the school board; in the case of a rural or suburban fire protection district, reclamation

> district, natural resources district, or hospital district, the board of directors; in the case of a health district, the board of health; in the case of a regional library, the regional library commission; in the case of an educational service unit, the board; in the case of a community college, the Community College Board of Governors for the area the board serves; in the case of an airport, the airport authority board; in the case of a weed control authority, the board; and in the case of a county agricultural society, the board of directors; . . .

We believe the provisions of the Act are applicable to rural water districts even though the districts are not expressly included in the statute. The definition of governing body set forth in Section 13-503 is not intended to be an all-inclusive detailing of governmental and political subdivisions subject to the requirements of the Act. This is apparent from the language employed in the statute. For example, the statute in part states, "governing body shall mean, in the case of a city, the council; . . ." The language is not exclusionary in nature.

Further, section 13-503 does not stand in isolation but is part of a comprehensive act and necessarily must be considered with other provisions of the Act. In construing a statute, the legislative intention is to be determined from a general consideration of the whole act with respect to the subject matter to which it applies and the particular topic under which the question is found, and the intention deduced from the whole will prevail over that of a particular part considered separately. ***Hollstein v. First National Bank of Aurora***, 231 Neb. 711, 347 N.W.2d 512 (1989); ***Anderson v. Peterson***, 221 Neb. 149, 375 N.W.2d 901 (1985). Section 13-502 provides that the Act shall not apply to governing bodies which have a budget of less than five thousand dollars. Other specific exceptions are set forth in Neb. Rev. Stat. § 13-515 (Cum. Supp. 1994) which provides that, "[t]he Nebraska Budget Act shall not apply to any public power district or public power and irrigation district organized pursuant to Chapter 70, article 6, to any rural power district organized pursuant to Chapter 70, article 8, or to any agency created pursuant to sections 18-2426 to 18-2434." It would not be necessary to establish specific exceptions for governmental subdivisions not included in section 13-503 if the statute was intended to be an all-inclusive listing of governmental subdivisions subject to the Act.

We further do not believe the issue whether the Act applies to rural water districts turns on the fact that the districts are not empowered to levy taxes. Provisions of the Act apply to all revenues received by the governmental subdivisions. The budget

statements are required to include "actual and estimated revenue from all sources" by Neb. Rev. Stat. § 13-504 (Cum. Supp. 1994). Further, the term, "public funds," is defined in section 13-503 to mean all money, including nontax money, used in the operations and functions of governing bodies for purposes of the Act. It is clear that the Act is to apply to proprietary activities and that revenues from these sources are to be included unless specifically excluded by statute. The legislature has excluded proprietary activities of municipalities from application of the Act in section 13-502. If the Legislature did not intend that the provisions of the Act are to apply to revenues from proprietary activities of other subdivisions, it could have so provided.

It is significant that the Act has been interpreted by the Auditor of Public Accounts to apply to all governmental subdivisions except those specifically excluded. The Auditor of Public Accounts is the executive officer of the state charged with responsibilities for compliance with provisions of the Act. For this reason, the interpretation and application of the Act by your Office is entitled to deference by the courts. The Nebraska Supreme Court has recognized that a presumption of validity attaches to actions of administrative agencies. ***Dillard Dep't Stores v. Polinsky***, 247 Neb. 821, ___ N.W.2d ___ (1995); ***In re Application of United Tel. Co.***, 230 Neb. 747, 433 N.W.2d 502 (1988). And, courts appropriately accord deference to interpretation and application of legislative acts by administrative agencies and officers charged with enforcement of the statutory provision. ***Vulcraft v. Karnes***, 229 Neb. 676, 428 N.W.2d 505 (1988); ***ATS Mobil Tel. Inc., Omaha v. Curtin Call Communications, Inc.***, 194 Neb. 404, 232 N.W.2d 248 (1975). Further supportive of your Office's interpretation is the fact that, for the most part, governmental subdivisions whose governing bodies are not included in section 13-503 are complying with the Act by adopting and filing budget statements.

LEGISLATIVE HISTORY

We have previously reviewed the legislative history and in Opinion I92-087 we pointed out that the legislative history reflects that provisions of the Act are to apply to all governmental bodies except those specifically exempted. Legislative intent is the cardinal rule in statutory construction to ascertain the meaning of legislative acts. ***Iske v. Papio Nat. Resources Dist.***, 218 Neb. 39, 352 N.W.2d 172 (1984). And, the Nebraska Supreme Court, in ***Pump & Pantry, Inc. v. City of Grand Island***, 233 Neb. 191, 444 N.W.2d 312 (1989), confirmed the principle of statutory construction that a court may examine history of the act in question to ascertain legislative intent and to give effect to that intent. We believe that the interpretation that the Act applies to rural water districts is a reasonable

construction to effectuate the intent of the legislature. As the Nebraska Supreme Court has observed, a sensible construction should be place upon a statute to effectuate the object of the legislature rather than a literal meaning that would have the effect of defeating legislative intent. ***Miller v. Peterson***, 208 Neb. 658, 305 N.W.2d 364 (1981).

SUMMARY

Important legislative policy would be defeated if a narrow or literal construction was adopted that the requirements of the Act apply only to governing bodies of political subdivisions included in Section 13-503. We believe the legislative purpose of the Act is that governmental entities expending public monies are to be accountable to the public and subject to the requirements of the Act. Accordingly, it is the opinion of this Office that the requirements of the Act apply to rural water districts since the districts are not excluded by express statutory provision.

Sincerely yours,

DON STENBERG
Attorney General

Fredrick F. Neid
Assistant Attorney General

21-10P-7

APPROVED BY:

DON STENBERG, Attorney General