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ATTORNEY GENERAL

#09012

NO. STATE OF NEBRASKA
OFFICIAL
NOV 12 2009
DEPT. OF JUSTICE

SUBJECT: Whether A Proposed Amendment To Neb. Rev. Stat. § 84-612 (Supp. 2009) Is Within The Scope Of The Governor's Call For The First Special Session Of The One-Hundred-First Nebraska Legislature.

REQUESTED BY: Senator Lavon Heidemann
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
Dale A. Comer, Assistant Attorney General

This is the third in a series of opinions we have prepared in connection with the scope of the Governor's call for the First Special Session of the One-Hundred-First Nebraska Legislature which began on November 4, 2009. *See* Op. Att'y Gen. No. 09011 (November 9, 2009) and Op. Att'y Gen. No. 090010 (November 6, 2009). This opinion pertains to proposed changes in Neb. Rev. Stat. § 84-612 (Supp. 2009), a statute which creates the State's Cash Reserve Fund.

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GOVERNOR'S CALL

The Governor called the Legislature into special session to consider and enact legislation on the following subjects:

1. To reduce or eliminate appropriations and reappropriations approved by the 101st Nebraska Legislature;

2. To reduce or eliminate certain transfers from the State General Fund;

3. To authorize, increase, or make certain transfers to the State General Fund or to certain cash funds;

4. To modify or eliminate intent language and earmarks accompanying appropriations approved by the 101st Legislature;

5. To adopt statutory modifications necessary to reduce state aid appropriations and make formula adjustments contained in the Tax Equity and Educational Opportunities Support Act; and

6. To appropriate funds for the necessary expenses of the extraordinary session herein called.

APPLICABLE LAW

As we have done for previous opinions during this special session, we will refer you to our Op. Att'y Gen. No. 090010 (November 6, 2009), which contains an analysis of the applicable law relating to special sessions of the Legislature and the Governor's call.

ANALYSIS

Section 84-612 creates a fund within the state treasury to be known as the Cash Reserve Fund. That section also sets out a number of transfers to be made to various other state funds from the Cash Reserve Fund, including the following transfers to the Roads Operations Cash Fund:

> (14) On July 7, 2010, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

> (15) On July 7, 2011, the State Treasurer shall transfer five million dollars from the Cash Reserve Fund to the Roads Operations Cash Fund. The Department of Roads shall use such funds to provide the required state match for federal funding made available to the state through congressional earmarks.

In your opinion request, you cite the transfers to the Roads Operations Cash Fund noted above, and you state that:

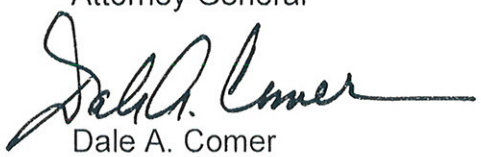
> The Appropriations Committee is discussing an amendment to 84-612 to require the $10 million of transfers to be made from the Cash Reserve Fund to the General Fund during the current fiscal year and eliminating the reference as to the use of such funds.

You requested our opinion as to whether that "action would be within the Governor's call for the current special session."

In our Opinion No. 090010, we characterized the purpose for which the present special session was convened as "generating additional monies for the State's General Fund by reducing appropriations, eliminating transfers from the General Fund, authorizing and making transfers to the General Fund, and reducing state aid appropriations." Op. Att'y Gen. No. 090010 at 4 (November 6, 2009). It seems to us that the amendment to § 84-612 described above is clearly germane to and related to the purpose for the current special session. Moreover, such an amendment to § 84-612 appears to fall squarely within the third subject of the Governor's call, i.e, "to authorize, increase, or make certain transfers to the State General Fund or to certain cash funds." For those reasons, we believe that the amendment described in your opinion request does fall within the scope of the Governor's call for the current special session of the Nebraska Legislature.

Sincerely,

JON BRUNING
Attorney General



Dale A. Comer
Assistant Attorney General

Approved :

Attorney General

pc: Patrick J. O'Donnell
Clerk of the Nebraska Legislature

05-163-20