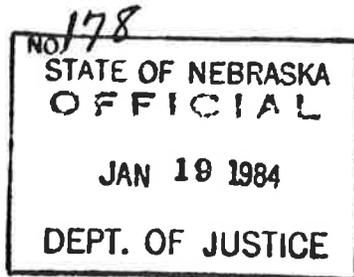


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



January 17, 1984

PAUL L. DOUGLAS
Attorney General
GERALD S. VITAMVAS
Deputy Attorney General
JOHN R. THOMPSON
Deputy Attorney General

SUBJECT: Nebraska State Board of Educational Lands
and Funds - Trustee Powers

REQUESTED BY: Nebraska State Board of Educational Lands
and Funds

OPINION BY: Paul L. Douglas, Attorney General
Ruth Anne E. Galter, Assistant Attorney General

QUESTION: Is the School Land Trust required to obtain written
approval of the central data processing administrator
pursuant to Section 81-1117(2)(e) prior to its
decision to upgrade the data processing system
which is owned by the Board?

CONCLUSION: No.

The question posed is the effect of Neb.Rev.Stat.
§81-1117(2)(e) on the Nebraska State Board of
Educational Lands and Funds. That section provides in part that:
"No state agency shall hire, purchase, lease, or rent any machine
data processing item listed in subsection (1) of this section without
the written approval of the central data processing administrator."

The authority and powers of the Nebraska State Board of
Educational Lands and Funds (hereinafter referred to as the
Board) are found in Article VII, Section 6 of the Nebraska
Constitution which provides that "The general management of
all lands set apart for educational purposes shall be vested
under the direction of the Legislature, in . . . the Board of
Educational Lands and Funds." In State ex rel. Ebke v.
Board of Educational Lands and Funds, 159 Neb. 79, 65 N.W.2d
392 (1954), the Nebraska Supreme Court stated that "The school
lands were received and are held in trust by the State of
Nebraska for educational purposes. The state as trustee of

Assistants

Bernard L. Peckett
Mel Kemmerich
Harold I. Mosher
Ralph H. Gillan
Terry R. Schaeff
Marilyn B. Hutchinson

Patrick T. O'Brien
J. Kirk Brown
Royce N. Harper
Sharon M. Lindgren
Ruth Anne E. Galter
G. Rodric Andersen

Dale A. Comer
Martel J. Bundy
Mark D. Starr
Dale D. Brodkey
Frank J. Hutfless
Linda L. Willard

John D. Boehm
Henry M. Grether III
Michael M. White
Calvin D. Hansen

Nebraska State Board of
Educational Lands and Funds
January 17, 1984
Page 2

the lands and of the income therefrom is required to administer the trust estate under the rules of law applicable to trustees acting in a fiduciary capacity."

The question you have posed is similar to that treated in Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1977). There, the issue was the extent to which the Nebraska State Legislature could control or interfere with the Board of Regents of the University of Nebraska in the general government of the University. The authority of the Board of Regents is found in Article VII, Section 10 of the Nebraska Constitution which provides that "The general government of the University of Nebraska shall, under the direction of the Legislature, be vested in a board of . . . regents. . . . Their duties and powers shall be prescribed by law." At issue in Board of Regents, id., was the meaning of the phrase "under the direction of the Legislature." That particular phrase appears in both constitutional grants of authority to the regents of the University of Nebraska and to the Board of Educational Lands and Funds. Further, the controversy in Board of Regents involved the expenditure of funds derived from sources other than the state general fund. There the Court noted that funds appropriated to the University by Neb.Rev.Stat. §85-131 (Reissue 1976) are trust funds, and can be expended only by the Board of Regents for the benefit of the University.

We would draw a parallel between the Nebraska Supreme Court's rationale in Board of Regents and its holding in Ebke v. Board of Educational Lands and Funds, supra, where it held that "the state as trustee of the lands and of the income therefrom is required to administer the trust of state. . ." The power and authority of the Board is set forth in the Constitution, which power and authority remains vested in the Board and cannot be delegated to other offices or agencies. Board of Regents v. Exon, supra. The expenditure of funds by the School Land Trust is solely within the administration of the trust. Consequently, the Legislature may not delegate such constitutional authority to another

Nebraska State Board of
Educational Lands and Funds
January 17, 1984
Page 3

agency. State ex rel. Belker v. Board of Educational Lands and Funds, 184 Neb. 621, 171 N.W.2d 156 (1969). Therefore, it is our opinion that the Board is not subject to Section 81-1117 which requires written approval of the central data processing administrator prior to the purchase of data processing equipment.

Very truly yours,

PAUL L. DOUGLAS
Attorney General

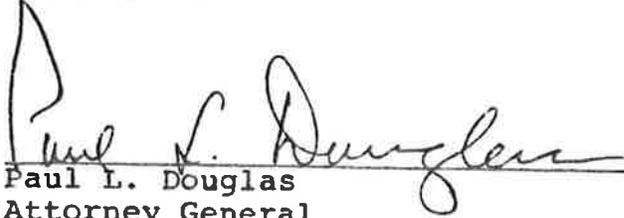


Ruth Anne E. Galter
Assistant Attorney General

REG:laj

cc: Patrick O'Donnell
Clerk of the Legislature

APPROVED BY:



Paul L. Douglas
Attorney General