

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

PAUL L. DOUGLAS
Attorney General

PATRICK T. O'BRIEN
Deputy Attorney General

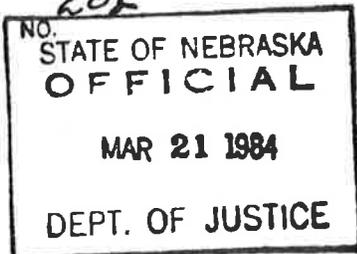
WARREN D. LICHTY, JR.
Assistant Attorney General
Chief Counsel
Department of Roads

State Highway Building
P.O. Box 94759
Lincoln, Nebraska 68509-4759
Telephone (402) 473-4611

ASSISTANT ATTORNEYS
GENERAL

GARY R. WELCH
JOHN P. REGAN
DALE L. BABCOCK, JR.
ROBERT C. AUSTY
JOHN E. BROWN
WILLIAM J. GREYER

March 20, 1984



SUBJECT: Disposition of excess property.

REQUESTED BY: Louis E. Lamberty, Director-State Engineer, Nebraska Department of Roads, P.O. Box 94759, Lincoln, Nebraska, 68509.

OPINION BY: Paul L. Douglas, Attorney General;
Gary R. Welch, Assistant Attorney General.

QUESTION: 1. Can the State of Nebraska give an option to the Sarpy County Development Department for land which the State knows will not be available for three years?

CONCLUSION: 1. Yes.

QUESTION: 2. Where the State sells property to the Sarpy County Development Department can it offer to them below market value?

CONCLUSION: 2. No. "The sale or conveyance of real property shall be in such manner as will best serve the interest of the State and will most adequately conserve highway funds." Neb.Rev.Stat. §39-1325 (Reissue 1979)

Under Neb.Rev.Stat. §39-1325 (Reissue 1979) the State of Nebraska, Department of Roads, has the authority to sell and convey excess property upon receiving approval from the Governor. That section says:

"The Department shall have the authority to sell and convey, with the approval of the Governor, any part of or any interest in real property held by the Department which is no longer deemed necessary or desirable for highway purposes. The sale or conveyance of such real property shall be in such manner as will best serve the interest of the State and will most adequately conserve highway funds."

With regard to the question of whether the State Department of Roads can option a property, Neb.Rev.Stat. §39-1326 (Reissue 1979) contemplates a sale and conveyance but is silent with regard to whether the State may option property as a part of the transaction. Section 39-1326 reveals that:

"The Director-State Engineer may execute, acknowledge, seal, and deliver all deeds, bills of sale, and other instruments necessary and proper to carry out the sale and exchange of real property.... The deeds, bills of sale, and other instruments may contain any conditions, covenants, exceptions, and reservations, which the department deems are in the public interest, or may convey title in fee simple absolute."

Although the word "option" is not specifically used, the language of the above statute gives latitude to the Director-State Engineer in the type of transaction to use as long as the Director-State Engineer applies a public interest and a preservation of highway funds standard.

The Director-State Engineer and the Governor are also controlled by the Constitution of Nebraska, Article III, Section 21, which states:

"Lands under control of the State shall never be donated to railroads, companies, private corporations or individuals."

This prohibition against donating to private corporations would not allow a sale of this land below market value to the Sarpy County Development Corporation, a private corporation.

Section 39-1325 would also prohibit this sale below market value since such would not be preserving highway funds.

Very truly yours,

PAUL L. DOUGLAS
Attorney General


Gary R. Welch
Assistant Attorney General

GRW/ta

Approved:


Patrick J. Burns
Deputy
Attorney General