

DEPARTMENT OF JUSTICE

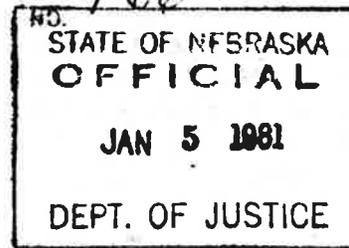
STATE OF NEBRASKA

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

January 4, 1982

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Senator Rex Haberman
State Capitol
Lincoln, NE 68509



Re: County Zoning

Dear Senator Haberman:

We are responding to your letter in which you state you are considering legislation pertaining to Nebraska's groundwater and would like us to advise you "if the statutes presently give the counties, through zoning laws, the authority to control underground water use.

Neb.Rev.Stat. §23-114 (Reissue 1977) authorizes a county board to create a planning commission with the powers and duties set forth in that act, to make amend and implement a comprehensive county zoning development plan then to adopt a zoning resolution having the force and effect of law. This zoning resolution may regulate "the uses of land for agriculture, forestry, recreation, residence, industry, and trade, after considering factors relating to soil conservation, water supply conservation, surface water drainage and removal, or other uses in the unincorporated area of the county." The use of this zoning power has been approved by our Nebraska Supreme Court in Crane v. Board of County Commissioners of Sarpy County, 175 Neb. 568, 122 N.W.2d 520 (1963) and City of Grand Island v. Ehlers, 180 Neb. 331, 142 N.W.2d 770 (1966).

Neb.Rev.Stat. §46-209 (Supp. 1981) gives jurisdiction to the Department of Water Resources "over all matters pertaining to water rights for irrigation, power, or other useful purposes. . . ." In Article VI of Chapter 46 of the Nebraska Statutes the Department of Water Resources is given jurisdiction over the state regulatory scheme for the extraction and use of underground water. Neb.Rev.Stat. §46-656, et seq. (Reissue 1978) have now been designated by the Legislature as the Nebraska Groundwater Management and Protection Act. Neb. Rev.Stat. §46-674 (Supp. 1981). This Act provides for specific regulation of control areas designated by the Director of the Water Resources when he determines that conditions require it according to statute.

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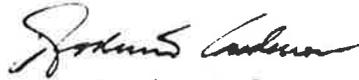
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It is our conclusion that Neb.Rev.Stat. §23-114 (Reissue 1978) gives each county the authority to regulate and restrict the use of land within its county and in doing so to consider water supply conservation and surface water drainage and removal. It does not authorize a county to control underground water use. This power to control the use of underground water is specifically granted to the Nebraska Department of Water Resources and to the respective natural resource districts, pursuant to Neb.Rev.Stat. §2-3229, et seq. (Reissue 1977) and Neb.Rev.Stat. §46-663 (Supp. 1980) and 46-666 (Supp. 1981).

Very truly yours,

PAUL L. DOUGLAS
Attorney General



G. Roderic Anderson
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GRA:kkh

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