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NO.
STATE OF NEBRASKA
OFFICIAL
SEP 26 [redacted]
DEPT. OF JUSTICE

DATE: September 26, 1994

SUBJECT: Statutory and Constitutional Constraints on the Use of Public Funds by Governmental Subdivisions to Purchase or Rent Buildings in Competition With Tax Paying Entities

REQUESTED BY: Senator George Coordsen
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

In your opinion request letter, you posed two questions to us involving the use of public funds by governmental subdivisions, and you stated that your opinion request was submitted "[i]n contemplation of possible legislation to be introduced in the coming legislative session." We will deal with each of your questions in turn.

You first ask:

> Are public non-profit entities such as municipalities, public power districts or the Municipal Energy Agency of Nebraska, which do not pay real estate or corporate income tax, permitted under Nebraska Statute to use their ratepayers [sic] revenues to purchase buildings and subsequently to rent out portions of such buildings to other organizations, either public or private, which would place them in direct competition with tax paying entities?

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The scope of your question makes it difficult for us to answer with any specificity since the authority for each municipality, power district, or other governmental subdivision referenced in your inquiry to use public revenues to purchase and rent buildings would be found in the specific statutes dealing with that entity or in other documents applicable to each individual entity such as home-rule charters. As a result, we can only comment generally on your question. In that regard, we are unaware of any one statute which would apply to all the subdivisions listed above and which would prevent them in any way from purchasing and renting buildings in direct competition with tax paying entities. Therefore, you may wish to consider such legislation at the upcoming legislative session if that is the purpose of your inquiry.

You next ask, "[s]econdly, are such organizations [as municipalities, public power districts or the Municipal Energy Agency] permitted to use such public funds to purchase buildings or land for economic development purposes or to further enhance their operating margins?"

Again, the number of governmental subdivisions included in your question and the multitude of statutes and other authorities applicable to those various subdivisions make it very difficult to answer with any degree of specificity. We are unaware of any statute which generally prohibits governmental subdivisions from using public funds to purchase buildings or land to enhance their operating margins. Apart from that, if a governmental subdivision is using public funds for economic development purposes, some question as to the propriety of that action might arise under Article XIII, Section 3 of the Nebraska Constitution which prohibits the use of public funds for private purposes. However, under Article XIII, Section 2 of the Nebraska Constitution and under the Municipal Economic Development Act, ***Neb. Rev. Stat. §§*** 18-2701 to 18-2723 (1991, Cum. Supp. 1992), municipalities might well be able to use public funds to purchase buildings or land for economic development purposes in certain circumstances. As a result, the answer to your second question also depends, a great deal, on the particular entity involved and the precise nature of the use of public funds proposed.

While we have, of necessity, offered general answers to the questions posed in your opinion request letter, we can respond in greater detail should you choose to provide more information to us

as to the specific governmental entity involved, the exact nature of the use of public funds at issue, and the nature and purpose of your proposed legislation.

Sincerely yours,

DON STENBERG
Attorney General

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Assistant Attorney General

05-23-14.op

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

Approved by:

Steve Grasz, Deputy AG
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