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NO.
STATE OF NEBRASKA
OFFICIAL
NOV 10 1994
DEPT. OF JUSTICE

DATE: November 3, 1994

SUBJECT: Accountability and Disclosure Commission Expenditure of Funds for Commission Recognition

REQUESTED BY: Dannie Trautwein, Executive Director
Nebraska Accountability and Disclosure Commission

WRITTEN BY: Don Stenberg, Attorney General
Linda L. Willard, Assistant Attorney General

You have requested the opinion of this office on several questions. We shall attempt to address each question individually.

You first ask whether an expenditure of funds for the purchase of a plaque, pen set, or similar token of appreciation given to a member of the Nebraska Accountability and Disclosure Commission upon leaving the Commission requires approval by the Personnel Division of the Department of Administrative Services. It is our determination that such an expenditure does not require approval by the Personnel Division for purposes of indicating compliance with Personnel rules unless the Commission has a specific agreement with the Personnel Division.

As noted in your letter, Neb. Rev. Stat. § 49-14,121 (1993) states that the "[m]embers of the [Nebraska Accountability and Disclosure] commission shall be exempted from the provisions of Chapter 81, article 13, except that they may be covered by the State Personnel System through specific agreement between the commission and the personnel division of the Department of Administrative Services." You indicated in your letter that the Commission has never entered into any such agreement with the State Personnel Division.

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Generally, the word "shall" appearing in a statute implies that whatever "shall" be done is mandatory. ***See Minden Beef Co. v. Cost of Living Council***, 362 F.Supp. 298 (Neb. 1973); ***Sherard v. State***, 244 Neb. 743, 509 N.W.2d 194 (1993); ***NC+ Hybrids v. Growers Seed Association***, 219 Neb. 296, 363 N.W.2d 362 (1985). Therefore, Neb. Rev. Stat. § 49-14,121 must be read as mandatorily excluding the members of the Commission from the State Personnel System unless and until an agreement is entered into between the Commission and the Personnel Division of the Department of Administrative Services.

Further, to the extent that there is conflict between two statutes on the same subject, the specific statute prevails over the general statute. Where the general and specific provisions of statutes are in conflict, the general law yields to the specific, without regard to priority of dates in enacting the same, and the specific law will not be repealed by general provisions unless by express words or necessary implication. ***See Maack v. School Dist. of Lincoln***, 241 Neb. 847, 491 N.W.2d 341 (1992). ***See also State v. Wood***, 245 Neb. 63, 511 N.W.2d 90 (1994); and ***Metropolitan Life Insurance Co. v. Kissinger Farms, Inc.***, 244 Neb. 620, 508 N.W.2d 568 (1993). Thus, the specific statutes of the Nebraska Accountability and Disclosure Commission as they relate to the State Personnel System must prevail over those statutes which are addressed to state personnel in general.

Since the statutes addressed to the Nebraska Accountability and Disclosure Commission specifically exempt the Commission from the provisions of Chapter 18, Article 13, the statutes contained therein would not be applicable to Commission members. The Commission may choose to follow Personnel policy on a voluntary basis or may enter into a binding agreement with the State Personnel System to have personnel policies and procedures applicable to the Commission.

Since the statutes exempt Commission members from the Personnel System, the State Personnel System and Department of Administrative Services may not require that the statutes in Chapter 81, Article 13 or other personnel policies promulgated thereunder be applied to the Commission members without first receiving specific agreement from the Commission. In the absence of an agreement with the Personnel System, Chapter 81, Article 13 of the Nebraska Statutes and rules promulgated thereunder may not be enforced with regard to Commission members.

You next ask if an expenditure for a gift of appreciation to a Commission member is unlawful if it is not authorized by the Personnel Division of the Department of Administrative Services through an approved Employee Recognition Program. The Legislature established the Employee Recognition Program in LB 44 of the 1993

legislative session. The program was placed within Chapter 81, Article 13 of the Nebraska Statutes.

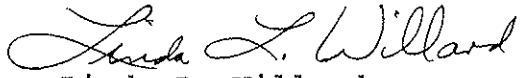
In enacting statutes, the Legislature must be presumed to have knowledge of all previous legislation upon the subject. ***Wahlers v. Frye***, 205 Neb. 399, 288 N.W.2d 29 (1980). Therefore, it is to be presumed that the Legislature was aware that the Accountability and Disclosure Commission members were exempt from Chapter 81, Article 13 when it placed the Employee Recognition Program thereunder. No complimentary legislation was passed to include Commission members within this specific program.

Thus, expenditure for gifts of appreciation to Commission members, in the absence of an agreement between the Commission and the Personnel Division, do not come under the requirements of the Employee Recognition Program. Failure to receive authorization of the Personnel Director or to comply with the provisions of Chapter 18, Article 13 of the Nebraska Statutes and the rules and regulations promulgated thereunder does not make expenditure of funds for Commission members unlawful.

Your final question is whether the Department of Administrative Services may reject or otherwise refuse to issue a warrant in payment of such an expenditure as described above and under what conditions the Department of Administrative Services may do so. Our conclusion is that the Department of Administrative Services may reject or refuse to issue a warrant for such an expenditure under a number of conditions. Those conditions would include that the disbursement document is not properly completed, that proper Commission authorization is not present, or that sufficient funds do not exist for the payment of the request. The expenditure of funds which you have outlined in your letter must comply with all general requirements of the Department of Administrative Services for disbursement of funds. However, as stated above, it is not necessary to comply with requirements contained in Chapter 81, Article 13 and rules and regulations promulgated thereunder.

Sincerely,

DON STENBERG
Attorney General



Linda L. Willard
Assistant Attorney General

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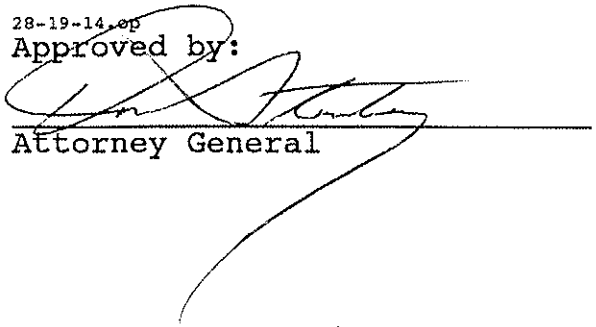

Attorney General