STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#94088

NO.
STATE OF NEBRASKA
OFFICIAL
NOV 17 1994
DEPT. OF JUSTICE

DATE: November 14, 1994

SUBJECT: Retirement System For Nebraska Counties; Eligibility For Membership

REQUESTED BY: James Cashin, Director
Public Employees Retirement Systems

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

This is in reply to your question regarding continued participation by certain County employees as members of the Retirement System for Nebraska Counties. The Retirement System for Nebraska Counties is the statutory retirement plan established for county employees under the provisions of the County Employees Retirement Act, Neb. Rev. Stat. §§ 23-2301 to 23-2332 (1991, Cum. Supp. 1992, and Supp. 1993). The specific question you ask is, "Will the employees who are hired by the inter-local agreement be members of the Nebraska County Employees Retirement System?" Based on the information you submitted, we believe that the employees in question would be county employees eligible for continued participation as members of the Retirement System for Nebraska Counties if statutory requirements are complied with. The term, employees, as used in the County Employees Retirement Act, is defined in Neb. Rev. Stat. § 23-2301 (Supp. 1993) which in part states:

> (1) Employees shall mean all persons or officers who are employed by a county of the State of Nebraska devoting twenty or more hours per week to such employment, persons employed as provided in section 2-1608, all elected officers of a county, and such other persons or officers

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> as are classified from time to time as permanent employees by the county board of the county by whom the are employed, . . .

County employees would be members of the Retirement System for Nebraska Counties if they meet the requirements of Neb. Rev. Stat. § 23-2306 (1991) which provides:

> The membership of the retirement system shall be composed of (1) all full-time employees who have been employees for a period of twelve continuous months, except that elected officials shall be eligible for membership on taking office, and (2) all part-time employees who have attained the age of twenty-five and have been employed for a total of twelve months and who exercise the option to join the retirement system. An employee who exercises the option to join the retirement system shall remain in the system until termination or retirement.

The proposed inter-local agreement between the Nebraska Counties of Box Butte, Cheyenne, Dawes, Deuel, Garden, Keith, Scotts Bluff, Sheridan, and Sioux, has been reviewed together with the letter of Craig Nelson of the Nebraska Association of County Officials. Based on our review of these materials, we find no reason why the employees in question would not be employees as that term is defined and used in the County Employees Retirement Act and therefor entitled to continued membership in the Retirement System for Nebraska Counties. The letter of Craig Nelson, in part, states, ". . . The juvenile detention facility operating in Gering is currently owned and operating solely by Scotts Bluff County and each of the facilities' employees are employees of Scotts Bluff County." If the proposed agreement is formalized, it is our understanding that the facility will be operated jointly by the counties that are parties to the agreement. Consequently, the facility will continue to be owned and operated as a function of county government. Unless you have other information that the employees in question would no longer be county employees, it is our view that the county employees would continue their eligibility as members of the Retirement System.

In 1971-1972 Rep. Att'y Gen. 22 (Opinion No. 11, dated February 4, 1971) we considered the question whether employees of a county community hospital were county employees for purposes of the County Employees Retirement Act. In the course of that opinion, we stated:

> The question then, is whether a county community hospital operating under the provisions of Sections 23-343 to 23-343.14, R.R.S. 1943, is a part of county government, or is in independent political subdivision. We believe that

> it is clear from the statutes that the operation of such a hospital is a function of county government . . . . Section 23-343 provides that the county board may issue the bonds to finance the construction or acquisition of such a hospital. Section 23-343.01 provides for appointment of the board of trustees by the county board. The salary of the members of the board of trustees is fixed by an order of the county board. The board of trustees is required to file its by-laws, rules and regulations with the county board. The board of trustees is required to file a report of its proceedings with the county board, and to certify to the county board the amount necessary to maintain and improve its facilities for the ensuring year. The funds for the construction of the facilities and the operation of the hospital are raised by county wide tax levies. All of these provisions convince us that, while the board of trustees of the hospital have a certain amount of independence, they are basically subservient to the county board, and, as we previously concluded, the operation of the hospital is a function of county, and its employees therefore are county employees, and subject to the County Employees Retirement Act.

Id. at 23 (Emphasis added). Similarly, we believe that the operation of the detention facility continues to be a joint operation and function of county government. Consequently, the employees would continue as county employees and therefore eligible for continued membership and participation in the Retirement System for Nebraska counties.

We note you have referenced Neb. Rev. Stat. § 2-1608 (Cum. Supp. 1992) in your letter of September 23, 1994. We do not believe § 2-1608 is relevant to your inquiry since the statute is applicable only to county extension employees jointly employed by participating extension organizations.

Sincerely yours,

DON STENBERG
Attorney General

Fredrick F. Neid
Assistant Attorney General

Approved By:

Attorney General

21-629-6.10