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STATE OF NEBRASKA
OFFICIAL
MAR 11 1992
DEPT. OF JUSTICE

DATE: March 10, 1992

SUBJECT: Negotiation (Cashing) of Personal Checks and Other Demand Instruments by County Offices

REQUESTED BY: John Breslow, Auditor of Public Accounts

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

You have requested our interpretation and assistance in determining the authority of counties in using public funds for negotiation (cashing) of checks in county offices. You also specifically inquire whether county treasurers may cash two party or personal checks for anyone, employees or otherwise.

You have indicated that you believe the county treasurer and county offices may not cash checks for any purpose "other than official business." We generally agree with your conclusion. It is our opinion that county offices including the county treasurer may not cash checks unless the transactions are related to official duties or to facilitate general operational expenditures and purchases of the county.

It is important to point out that a county is a body corporate and politic and that its powers are executed by a county board. Neb. Rev. Stat. § 23-103 (Reissue 1987). The county treasurer may not directly or unilaterally establish cash funds for certain purposes since this is the province of the county board. Powers of a county are required to be exercised by the county board. State ex rel. Johnson v. County of Gage, 154 Neb. 822, 49 N.W.2d 672 (1951). Further, a county, even though a body politic and corporate, is a creature of statute and has only such authority as

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conferred by the legislature. Lindburg v. Bennett, 117 Neb. 66, 219 N.W.2d 851 (1928). Accordingly, the use of cash funds for the purposes you have described is permissible only if the purposes and uses are legislatively authorized.

Neb. Rev. Stat. § 23-1601 (Reissue 1987) provides for the duties of the county treasurer and in pertinent part states:

> (1) It shall be the duty of the county treasurer to receive all money belonging to the county, from whatsoever source derived, and all other money which is by law directed to be paid to him or her. All money received by him or her for the use of the county shall be paid out by him or her only on the warrants issued by the county board according to law, except where special provision for the payment thereof is or shall be otherwise made by law.

(Emphasis added).

This provision requires that county funds be disbursed by warrants paid by the treasurer and issued by the county board. The relevant question is whether the county has authority to issue a warrant to establish a cash fund for purposes of cashing or negotiating personal checks. Statutory authorization for a cash fund is provided in Neb. Rev. Stat. § 23-106 (Reissue 1987) which authorizes establishment of a petty cash fund by the county board "for the purpose of making payments for subsidiary general operational expenditures and purchases." Based on these provisions, we believe sufficient statutory authority exists for negotiation of checks if the statutory procedures are followed. That is, if a petty cash fund is established by the board and cash amounts are paid out by the county treasurer or other official through funds procured by warrant issued by the county board.

Whether the cashing of checks is permissible is a question of fact dependent on the purposes of a particular transaction. Obviously, permissible purposes would include transactions for general operational expenditures and purchases of the county. If the transactions which include the cashing of a check are unrelated to official duties or business of the county, the transactions would not be authorized. Powers of the board are strictly construed. Morton v. Carlin, 51 Neb. 202, 70 N.W. 966 (1897). And, our Supreme Court in Shanahan v. Johnson, 170 Neb. 399, 102 N.W.2d 858 (1960), has held that the grant of powers to counties and county boards must be strictly construed and any reasonable doubt of the existence of the powers is resolved against them. Thus, we conclude that it is inappropriate for a county office or

the county treasurer to cash checks if the purposes of the underlying transaction is unrelated to official duties or to facilitate general operational expenditures and purchases of the county.

You have also asked whether county treasurers may cash "two party or personal checks from anyone, employees or otherwise?" The statutes do not address this question with any specificity. We believe that a county appropriately may accept or negotiate a personal check, including a two party instrument, in the conduct of official duties and responsibilities. The related question you have asked concerns the circumstances that a personal or two party check may be cashed by a county treasurer. We believe transactions involving personal and two party checks would be lawful if completed for the purposes of facilitating county business and if the cash fund has been established for this purpose by the county board through issuance of a warrant. We cannot detail or enumerate all the circumstances which may exist for negotiation of personal and two party checks. Suffice it to say that numerous circumstances may exist in the conduct of county government business that personal and two party checks may be negotiated to facilitate payment of fees, taxes, attend meetings, or to serve any other related purpose of county government.

While we believe that it may be appropriate that county offices accept personal checks to facilitate the conduct of government business, it is important that adequate safeguards and controls be in place to prevent personal use and other abuses which may arise. Obviously, it is inappropriate that employees and other parties treat a cash fund as a "personal check cashing service" unrelated to the function of any county business.

As you have indicated, abuses of any cash funds for negotiation of personal and two party checks unrelated to purposes of county government constitute violations of Nebraska statutes. You have referenced Neb. Rev. Stat. § 77-2325 (Reissue 1990) which provides that removal of funds except for warrants legally drawn constitute a Class IV felony. Also, use of personnel, resources or funds under a public official's care and control for personal gain is prohibited by Neb. Rev. Stat. § 49-14,101 (Reissue 1988) and constitutes a Class III misdemeanor.

In summary, a cash fund may be established for negotiation of checks and other demand instruments to facilitate the operations of county government if statutory procedures are complied with. We also believe that the establishment of a cash fund which may be utilized for negotiation of checks to facilitate the conduct of county government business is a management decision to be made by the county board. If the funds are not used to facilitate the

conduct of official business of the county, the transactions would be unauthorized and may constitute criminal violations of Nebraska Statutes.

Sincerely yours,

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Attorney General

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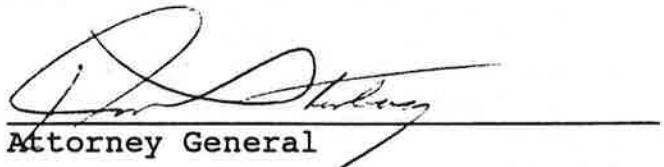
Approved By:



Attorney General

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