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STATE OF NEBRASKA
OFFICIAL
JUN 24 1992
DEPT. OF JUSTICE

DATED: June 23, 1992

SUBJECT: Compensation for Public Power District Board Members

REQUESTED BY: Nebraska Accountability and Disclosure Commission

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

On April 20, 1992, this office issued Attorney General Opinion No. 92062 in response to several questions from the Accountability and Disclosure Commission. In that opinion, we concluded as follows:

> Neb.Rev.Stat. §70-624.03 (Reissue 1990) grants authority to the board to establish a plan of insurance for employees and dependents of the public power district. It does not grant authority to establish an insurance plan for the board of directors. Nor can it be argued that there is an implied power to establish an insurance policy for power board members in order to carry out the duties of the public power district. Therefore, it is our determination that public power district boards have no authority to establish plans of insurance for board members.

On May 20, 1992, we received a request from the General Counsel for the Butler and Polk County Rural Public Power Districts requesting us to "give this matter further serious thought" in the hope "a different conclusion could be reached to eliminate the need for Political Accountability and Disclosure Commission action." Whereas this office does not represent local political subdivisions we do not provide legal opinions to such entities. In fact, we

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declined an opinion request from the Butler County Rural Public Power District on October 23, 1991 for this reason. However, we understand the Commission has tabled a matter before it concerning the issue of insurance for public power district directors pending our reconsideration of our prior opinion. Under the circumstances, we have decided to revisit this issue and to provide our conclusions directly to the Commission.

Pursuant to Nebraska laws governing public power districts, directors may be paid "compensation" up to certain amounts:

> The members of the board of directors shall be paid their actual expenses . . . and for their services. [up to $4,800 for members and $5,400 for the president of the board] Such compensation shall be fixed by the board of directors.
>
> . . .
>
> All salaries and compensation shall be obligations against and be paid solely from the revenue of the district. No director shall receive any other compensation from the district, except as provided in this section. . . .

Neb.Rev.Stat. §70-624.02 (Reissue 1990).

Directly following the above quoted statute is a separate statute regarding insurance: "The board of directors may establish a plan of insurance, designed and intended for the benefit of the employees of the district and the dependents of employees of the district. . . ." Neb.Rev.Stat. §70-624.03.

A third provision relevant to this issue is an insurance statute under another chapter of Nebraska law which provides: "Any political subdivision . . . of the State of Nebraska . . . may establish, participate in, and administer [insurance] plans for the benefits of its employees. . . ." Neb.Rev.Stat. §44-1615 (Reissue 1988).

Thus, within the statutory framework set forth above, the issue of whether public power districts may provide insurance for directors is dependent upon whether "compensation" under §70-624.02 includes insurance and/or whether "employee" in §70-624.03 includes directors and/or whether "employee" in §44-1615 includes directors of public power districts.

The term "compensation" as it is used in §70-624.02 is not defined. We agree "compensation" must be defined more broadly under this statute than just salary. However, the omission of any reference to directors from the provisions of §70-624.03 (authorization to establish insurance plans for employees of the

district) indicates "compensation" for directors, whatever it includes, does not include insurance. An applicable maxim is "expressio unis est exclusio alterius." Operating as an aid in determining legislative intent respecting statutory grants of power, this means that a statute enumerating things on which it operates or forbidding certain things must be construed as excluding from its effect all things not expressly mentioned, unless contrary legislative intent is plainly indicated.

Our conclusion, with respect to the meaning of "compensation," is consistent with general rules of statutory construction. Statutes pertaining to the same subject matter (i.e. §§70-624.02 and 70-624.03) should be construed together as if they were one law, and effect should be given to every provision. In construing a statute, legislative intention is to be determined from general consideration of the whole act, with reference to the subject matter to which it applies and the particular topic under which the language in question is found. Intent, as deduced from the whole, will prevail over that of a particular part considered separately.

Section 70-624.03 authorizes an insurance plan for "employees" of the district. Although the term "employees" may include officers (including directors) for purposes of some statutes, as the power district's attorney has pointed out, this is not a universally applicable rule. For example, in §70-624.04 (Supp. 1991), the legislature clearly distinguishes between "directors" and "employees." The same is true under §70-619 (Supp. 1991) which provides "No person who is a[n] . . . employee of the district shall be eligible to serve as a member of the board of directors. . . ." Under the general rules of statutory construction, a word or phrase repeated in a statute will bear the same meaning throughout the statute unless a different intent appears. Thus, the statutes on this subject appear to distinguish between employees directors. We also note that in the public power district's May 19, 1992, letter to this office their attorney states, at page 5, "there is sufficient authority to find that public power district directors should be considered employees for purposes of 70-624.03." However, in a document provided to this office, dated August 9, 1991, this same attorney's analysis of the same question concludes the exact opposite: "we do not believe that the distinction [between members of a board of directors and employees] is so blurred that a member of the board of directors would be considered an employee as that term is defined in Section 70-624.03, R.R.S. 1943, as amended."

Neb.Rev.Stat. §44-1615 authorizes all political subdivisions to establish insurance plans for the benefit of their "employees." It could be argued that the term "employee" in §44-1615 includes directors. However, it could also be argued §44-1615 does not authorize anything not otherwise authorized by §70-624.03. Under

general rules of statutory construction, specific statutory provisions relating to a particular subject (i.e. §70-624.03) control over general provisions (i.e. §44-1615). In such case, §44-1615 would be irrelevant to this situation, as the question would be controlled by the more specific statute.

Notwithstanding the above analysis, the legal question at issue is one of considerable uncertainty. Only legislative clarification or a court decision will fully resolve the matter. While we believe our original analysis remains valid, our opinion was and is necessarily a judgment call on a close question. A court could decide that "compensation" under §70-624.02 may be in any form so long as it is within the statutory dollar limit.

In conclusion, it would seem difficult, in our view, to justify fines or other action against public power district directors on the basis of "violations" stemming from their interpretation of this close legal question. This decision, however, is for the Commission to make.

Sincerely yours,

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Approved By:

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