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STATE OF NEBRASKA
OFFICIAL
JUN 30 1992
DEPT. OF JUSTICE

DATE: June 29, 1992

SUBJECT: State aid to private bus companies to provide specified bus service for the public.

REQUESTED BY: Allan L. Abbott, Director-State Engineer

WRITTEN BY: Don Stenberg, Attorney General
Robert G. Avey, Assistant Attorney General

You have inquired whether it would be constitutional for the State to contract with private bus companies, through a bidding process, to provide a specified bus service for the public. After conferring with the employees in the division of the Department of Roads responsible for implementing the Nebraska Public Transportation Act of 1975, Neb.Rev.Stat. §§13-1201 to 13-1212 (Reissue 1991), it appears that the main issue is whether the Department of Roads can use State funds appropriated for purposes set forth in the act to provide assistance to subsidize a private, profit-making company.

Section 13-1209 of the Nebraska Public Transportation Act of 1975, states:

> (1) A public transportation assistance program is hereby established to provide state assistance for the operation of public transportation systems.
>
> (2) Any municipality, county, transit authority, or qualified public-purpose organization shall be eligible to receive financial assistance for the eligible operating costs of a public transportation system, whether the applicant directly operates such system or contracts for its operation. . . .
>
> (3) The state grant to an applicant shall not exceed fifty percent of the eligible operating costs of the public transportation system as provided for in subsection (2) of this section. The amount of state funds shall be matched by an equal amount of local funds in support of operating costs.

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(Emphasis added.)

Section 13-1203 of the Nebraska Public Transportation Act of 1975 defines qualified public-purpose organization as follows:

> (7) Qualified public-purpose organization shall mean an incorporated private <u>not-for-profit</u> group or agency which:
>
> (a) Has operated or proposes to operate only motor vehicles having a seating capacity of twenty or less for the transportation of passengers in the state;
>
> (b) Has been approved as capable of providing public transportation services by the appropriate city or county governing body; and
>
> (c) Operates or proposes to operate a public transportation service in an area which the department has identified as not being adequately served by existing public or private transportation services pursuant to section 13-1205.

(Emphasis added.)

Since section 13-1209 allows State financial aid only to municipalities, counties, transit authorities or a qualified public purpose organization, a subsidy to a private for-profit bus company would not be legal. Paragraph (3) of this statute also requires that an equal amount of local funds must be matched with State funds in order to receive the State funds. Because of these restrictions on financial aid from the State, any direct subsidy from the State to a private, profit-making company would be illegal.

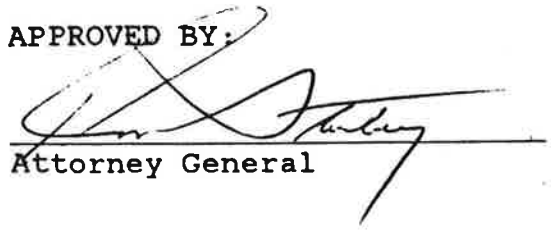
We understand that you are considering new legislation which may include a bidding procedure, and we believe that such a program could be structured to comply with the Constitution. We would be glad to review such a proposal.

Sincerely,

DON STENBERG
Attorney General

Robert G. Avey
Assistant Attorney General

APPROVED BY:



Attorney General