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STATE OF NEBRASKA
OFFICIAL
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DEPT. OF JUSTICE

DATE: August 19, 1992

SUBJECT: State Telecommunications System; Reimbursement for Long Distance Telephone Calls Placed by State Employees

REQUESTED BY: Lawrence S. Primeau, Director
Department of Administrative Services

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

Our opinion has been requested regarding interpretation and application of Nebraska statutes to assist the Department of Administrative Services and the Auditor of Public Accounts in establishing a policy for reimbursement for long distance telephone calls placed by state employees.

The questions you have presented are due in part to enactment of Legislative Bill 722 during the 1992 legislative session which was approved by the Governor on February 28, 1992. Section 3 of the bill amended Neb. Rev. Stat. § 81-1120.27 in its entirety to provide:

> The facilities of the state's telecommunications systems are provided for the conduct of state business. In addition, the state's telecommunications systems may be used by state employees and officials for local and long distance calls to children at home, teachers, doctors, day care centers, and baby sitters, to family members to inform them of unexpected schedule changes, and for other essential personal business. The use of the state's telecommunications systems for essential personal

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> business shall be kept to a minimum and shall not interfere with the conduct of state business. Essential personal long distance calls shall be either collect, charged to a third-party, non-state number, or charged to a personal credit card.

Prior to amendment, the provisions of Section 81-1120.87 were highly restrictive and the only authorized use of the state's telecommunications systems was for business of the state or its political subdivisions except under emergency conditions. While the statute currently authorizes use for personal business of state employees and officers, its provisions continue to be very restrictive. Usage of the state's telecommunications systems is permitted only for "essential personal business" if it does not interfere with the conduct of state business and that usage for essential personal business is to be kept to a minimum. Further, the statute as amended provides that essential personal long distance telephone calls shall be collect, charged to a third party, non-state number, or charged to a personal credit card. Thus, it is clear that the state is not to incur any cost for personal long distance calls placed on the state's telecommunications systems.

In light of these provisions, you pose several questions regarding reimbursement for long distance telephone communications made by state employees. The first question you have asked is whether a state employee may be reimbursed for the cost of a long distance telephone call when that "employee's agency has determined the request for reimbursement is reasonable and has approved said request." Under the facts you have presented, the employee is traveling on state business and the telephone call is placed on a private or non-state telecommunications system to the personal residence of the employee. The provisions of Section 81-1120.27 pertain to authorized use of the state telecommunications systems by state employees and do not address reimbursement for expenses incurred by state employees while traveling on state business.

Authorization for reimbursement of employee expenses is addressed in Neb. Rev. Stat. § 81-1174 (Cum. Supp. 1990) which in relevant part states:

> Whenever any state officer, employee, or member of any commission, council, committee, or board of the state is entitled to be reimbursed for actual expenses incurred by him or her in the line of duty, he or she shall be required to present a request for payment or reimbursement each month to the Director of Administrative Services. . . .

The issue presented is whether a long distance telephone communication placed by a state employee to his or her personal residence is an expense incurred in the line of duty and thereby reimbursable as a personal maintenance expense. The statute does not expressly address whether long distance telephone communications are a reimbursable expense and accordingly, reimbursement for such expenses are neither excluded nor specifically authorized. However, a reasonable construction of the term, actual expenses incurred in the line of duty, may include reimbursement for long distance telephone calls placed to the personal residence of a state employee when that employee is in travel status on official state business. We deem this question to be a policy issue and we understand that actual practice is that state employees while in travel status are reimbursed for long distance telephone calls placed to their personal residences when the costs are considered reasonable and approved by the employing agency. The actual practice of reimbursement of these costs constitutes the informal policy of the Department of Administrative Services.

We cannot conclude that this policy is contrary to statutory provisions and the policy appears to be a reasonable construction of the statute. For the most part, it is the responsibility of the Director of Administrative Services to establish policies regarding reimbursement of personal maintenance expenses incurred by state employees and officials. Generally, consideration is given to administrative interpretation by the agency or officer charged with implementation of the statute. The practical construction of a statute by officers or administrative bodies charged by law with its enforcement is entitled to considerable weight in interpreting that law. Belitz v. City of Omaha, 172 Neb. 36, 108 N.W.2d 421 (1961); Vulcraft v. Karnes, 229 Neb. 676, 428 N.W.2d 505 (1988). Thus, we conclude that reimbursement for certain long distance telephone calls on non-state telecommunications systems do not violate Nebraska statutes.

The second question you have raised includes the same facts posed in the first question except that the telephone call is placed with a "State of Nebraska issued calling card." We do not believe that a different conclusion may be reached because the call was charged to or facilitated by use of a state issued charge card.

You also inquire whether the cost of a long distance telephone call placed by a state employee to his or her personal residence may be incurred by the state in certain circumstances. Under the facts you have submitted, the employee is traveling on state business, away from his or her primary work location, and the state agency is paying directly for lodging and telephone charges. We have concluded that long distance calls may be reimbursable as

reasonable personal maintenance expenses under policies established by the Director of Administrative Services. The fact that the charges are paid directly or billed through other direct paying mechanism to the employing agency does not alter that conclusion.

We point out that the issues you have raised present close questions which are not expressly addressed by the underlying statutes and we have found no cases which serve as precedent. It is very difficult to extract a universal rule or policy to give meaning to the terms, personal and business. Other states have defined a personal call as "one having no direct or indirect bearing upon the business" of the state. State Telephone Directory, Commonwealth of Massachusetts. In reviewing similar questions, the courts generally have determined that an examination of facts in each case is necessary.[1] While we have concluded that certain long distance calls to the personal residence of an employee on travel status on official business may be reimbursable, that conclusion in part is based on what we believe to be the policy and actual practice of administering agencies.

The Auditor of Public Accounts has advanced the position that reimbursement for long distance calls placed to an employee's personal residence is not permitted directly or indirectly. While our conclusion differs, the position of the Auditor of Public Accounts is not without merit and the concern of the Auditor of Public Accounts is justified to some extent. We have noted that the Director of Administrative Services appropriately should establish a policy or policies for reimbursement of personal maintenance expenses. It is obvious that a policy permitting reimbursement for long distance telephone communication under limited circumstances necessarily should be carefully monitored and supervised to preclude abuse.

We believe that the Department of Administrative Services initially has the responsibility for establishing the policy and for implementation of the policy as the reviewing authority for expense reimbursement. It is recommended that the policy, as it presently exists and after revision, be formalized to facilitate consistent application of the policy by state agencies, boards and commissions.

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[1] The courts most frequently have reviewed these types of issues in the context of tax cases regarding business expense deductions. See Higgins v. C.I.R., 61 S.Ct. 475, 312 U.S. 212, 85 L.Ed. 783 (1941).

Sincerely yours,

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21-1-7.18
APPROVED BY:

DON STENBERG, Attorney General