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STATE OF NEBRASKA
OFFICIAL
AUG 25 1992
DEPT. OF JUSTICE

DATE: August 24, 1992

SUBJECT: Application of Political Subdivision Budget Limitations to Tax Levy Provisions for County or City Ambulance Service and for Payment of Insurance Premiums or Cost of Membership in Risk Management Pool by Public Agencies.

REQUESTED BY: Ellen L. Totzke, Hall County Attorney

WRITTEN BY: Don Stenberg, Attorney General
L. Jay Bartel, Assistant Attorney General

You have requested our opinion as to the application of the statutory provisions imposing budget limitations on political subdivisions (other than school districts) contained in Neb.Rev.Stat. §§ 77-3437 to 77-3441 (Supp. 1991) (amended, 1992 Neb. Laws, 1st Special Session, L.B. 1, §§ 162-165)), to statutory provisions governing tax levies for county or city ambulance services, Neb.Rev.Stat. § 13-303 (Reissue 1991), and for payment of insurance premiums or the cost of membership in a risk management pool incurred by public agencies, Neb.Rev.Stat. §§ 44-4304 and 44-4317 (Reissue 1988). Your specific question is whether the tax levy provisions of §§ 13-303 and 43-4317 "exempt" taxes levied for these purposes from the budget limitations imposed on counties pursuant §§ 77-3437 to 77-3441.

Section 77-3438 provides, in pertinent part: "(1) Except as provided in sections 77-3438.01, 77-3439, and 77-3440, no governing body shall adopt a budget statement pursuant to section 13-506. . .in which the anticipated aggregate receipts from property taxes for any fiscal year exceed the anticipated aggregate receipts from

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property taxes for the prior fiscal year. . . ." Section 77-3437(3) provides the definition of "[g]overning body" shall be that found in § 13-503, with the exception of school boards or boards of education of school districts. Pursuant to § 13-503, the term "governing body" includes the county board of a county. "Adopted budget statement" is defined in § 77-3437(1) to have the same meaning as in § 13-503, in which the term is defined to mean "a proposed budget statement which has been adopted or amended and adopted as provided in section 13-506."

Section 77-3439 permits a governing body to "increase the anticipated aggregate receipts from property taxes by up to five percent more than the amount permitted by section 77-3438 upon an affirmative vote of at least seventy-five percent of the governing body." Section 77-3440 provides that, if an increase greater than that allowed under § 77-3439 is to be permitted, such must be approved at a special election called by the governing body "for the purpose of placing the question of such increase before the voters."

Neb.Rev.Stat. § 13-303 (Reissue 1991) authorizes counties, cities, and villages to "provide ambulance service as a governmental service either within or without the county or municipality, as the case may be." This section further provides:

> Any county board of counties and the governing bodies of cities and villages may pay their cost for such service out of available general funds, or may levy a tax for the purpose of providing necessary ambulance service, which levy shall be in addition to all other taxes and shall be in addition to restrictions on the levy of taxes provided by statute; . . . .

Neb.Rev.Stat. § 44-4304 (Reissue 1988) authorizes public agencies to enter into agreements to "become members of, and operate a risk management pool for the purpose of providing members risk management services and insurance coverages" to protect members against losses arising from the following: general liability; property damage, destruction, or loss; errors and omissions liability; and workers' compensation liability. Section 44-4317 provides:

> (1) Any public agency which has the authority to levy a tax shall be authorized to levy a tax, . . .to pay the premium costs of general liability insurance, property insurance, workers' compensation insurance, and any other insurance to protect against any of the losses described in section 44-4304 and to pay all costs and expenses associated with membership in a risk management pool. . . .

This section further provides:

> Taxes for the payment of the principal of, premium of, or interest on such a general obligation bond of such public agency, the payment of such insurance premium costs, and the payment of all costs and expenses associated with membership in a risk management pool may be levied in excess of any tax limitation imposed by statute.

On several occasions, this office addressed the relationship between statutory provisions granting authority to political subdivisions or other statutorily created entities to levy taxes up to a specified mill amount, or providing that the levying or taxing authority of a political subdivision was in addition to restrictions on the levy of taxes provided by statute, and the provisions of the Political Subdivision Budget Limit Act of 1979, Neb.Rev.Stat. §§ 77-3412 to 77-3430 (repealed, 1985 Neb. Laws, L.B. 6, § 7). Report of Attorney General 1979-80, Opinion No. 167 (October 31, 1979); Opinion No. 227 (February 20, 1980); Opinion No. 323 (October 8, 1980); and Opinion No. 335 (November 12, 1980).

In Opinion No. 167, supra, we were asked to address whether the budget limitations imposed under the prior budget limit act applied to a statute authorizing rural fire protection districts to provide ambulance services and to levy a tax for such purpose, which levy was to be "in addition to any other tax for such fire protection district," and was "in addition to restrictions on the levy of taxes provided by statute, ..." Report of Attorney General 1979-80 at 236. We concluded that the levy authorized for ambulance services under this section was limited by the budget limitations imposed under the budget limit act. Id. at 237.

In Opinion No. 227, supra, we referenced our conclusion in Opinion No. 167, supra, and explained further the impact of the budget limit provisions of the budget limitation act on statutory provisions providing authority for the levy of taxes up to a specified mill amount, or in addition to statutory restrictions on the levy of taxes, stating:

> The limitations of [the Political Subdivision Budget Limit Act of 1979] applies [sic] to budgets not to tax levies. Any tax authorized may be levied. The limit arises in the amount that may be spent, i.e. no budget exceeding seven percent may be adopted. As long as the subdivision remains within a limit the tax may be levied.

Report of Attorney General 1979-80 at 330.

In Opinion No. 323, supra, we considered "whether subdivisions which have a statutory authorization to levy a tax up to a specific

mill amount may utilize that statutory authorization or are they limited by the provisions of . . . the Political Subdivision Budget Limit Act of 1979, popularly known as the lid law." Report of Attorney General 1979-80 at 467. After reviewing the pertinent provisions of the budget limit law, we concluded

> that notwithstanding the fact that a political subdivision may be authorized to levy up to a specific mill amount if it is not so levying that amount it may not levy to that amount if such a levy would result in a violation of the seven percent limit on local subdivision budget increases. Thus, . . .the seven percent lid law takes precedence over a specific mill levy limitation upon political subdivisions.

Id.

Finally, in Opinion No. 335, supra, we addressed whether a county historical society was a "political subdivision" for purposes of the Political Subdivision Budget Limit Act of 1979. While we concluded that a county historical society was not itself a "political subdivision" as defined in the Act, we noted an additional question existed as to "whether or not the mill levy authorized [for establishment or maintenance of the society] is nonetheless embraced within the county budget and thus covered by the seven percent budget limit act." Report of the Attorney General 1979-80 at 491. We concluded as follows:

> We believe in these circumstances that the county board is the agency which will determine what amount will be levied to support the historical society. As such, it would be part of the county budget itself. That budget, of course, is subject to the seven percent limit placed on county budgets.
>
> As you know, this does not mean that the specific budget of the county historical society would be subject to the seven percent limitation but only that it would be embraced within the larger county budget which is subject to the seven percent limitation in toto rather than the separate funds which comprise the general budget of the county.

Id.

As demonstrated by the foregoing opinions, this office has previously adopted the view that, in situations where statutes authorized political subdivisions to levy taxes "in addition to other taxes" or "in addition to restrictions on the levy of taxes provided by statute," or to levy taxes up to a specified mill

amount for a particular purpose, such provisions do not override or exempt such levies from the operation of a limitation on political subdivision budgets. The limits of both the former Political Subdivision Budget Limit Act, as well as the current lid imposed pursuant to §§ 77-3437 to 77-3441, apply to budgets, not tax levies. While statutory provisions such as §§ 13-303 and 44-4317 indeed authorize the levy of taxes for the purposes specified, even if "in excess of any tax limitation imposed by statute" (§ 44-4317), or which are "in addition to restrictions on the levy of taxes provided by statute" (§ 13-303), this does not constitute an exception to the budget limitations imposed under §§ 77-3437 to 77-3441, as such limit relates to the amount which may be spent based on revenues raised by property taxation, i.e. no budget statement may be adopted in which anticipated aggregate receipts from property taxes for a fiscal year exceed anticipated aggregate receipts for the prior year, unless an increase is approved by the governing body under § 77-3438, or by the voters of the political subdivision under § 77-3439. Removal of statutory restrictions relating to the levy of taxes does not, based on our prior opinions, "exempt" such levies from the effect of statutorily imposed budget limitations.

Therefore, it is our opinion that, to the extent funding for the above-stated purposes is provided by property taxes, as defined in § 77-3437(5), and such amounts are part of the budget statement adopted by the county, such amounts, being part of the general budget statement for the county, are subject to the budget limitation provisions of §§ 77-3437 to 77-3441.

Very truly yours,

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APPROVED BY:

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7-422-7.14