STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

92108

NO.
STATE OF NEBRASKA
OFFICIAL
AUG 31 1992
DEPT. OF JUSTICE

DATE: August 27, 1992

SUBJECT: Application of Budget Limitations to Newly Created Political Subdivisions.

REQUESTED BY: John Breslow, Auditor of Public Accounts

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

The Deputy State Auditor has requested the opinion of this Office regarding application of the budget limitation provisions to newly created political subdivisions.

The first question you have asked is whether a newly formed political subdivision which has never levied for property taxes is required to obtain voter approval before the initial tax levy. You have indicated that it is the position of the Auditor of Public Accounts that newly formed political subdivisions are required to conduct a special election to levy a tax under budget limitation provisions.

We believe that a newly established political subdivision is not required to obtain voter approval through special election to levy a tax otherwise authorized by law. The limitation provisions are set forth in Neb. Rev. Stat. § 77-3438 (Supp. 1991) which states:

> (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 or pursuant to the charter or ordinance of a city with a home rule charter in which the anticipated receipts from property taxes,

L. Jay Bartel
J. Kirk Brown
Laurie Smith Camp
Elaine A. Chapman
Delores N. Coe-Barbee
Dale A. Comer
David Edward Cygan
Mark L. Ells
James A. Elworth
Lynne R. Fritz
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Donald A. Kohtz
Sharon M. Lindgren
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Harold I. Mosher
Fredrick F. Neid
Paul N. Potadle
Marie C. Pawol
Kenneth W. Payne
LeRoy W. Sievers
James H. Spears
Mark D. Starr
John R. Thompson
Susan M. Ugai
Barry Waid
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

for any fiscal year beginning with fiscal year 1991-92, exceed the anticipated receipts from property taxes for the prior fiscal year or, for a governing body which budgeted no revenue to be received from the levy of taxes on real and personal property in such year, the most recent fiscal year prior to such year for which the governing body did budget to receive revenue.

(2) A governing body may increase property taxes by a specific dollar amount greater than that permitted by subsection (1) of this section if a final order of a court from which no appeal is taken requires reimbursement by the governing body of property taxes to a taxpayer. Such increase shall not exceed the amount of the reimbursement.

(3) For political subdivisions that have annexed property or have consolidated after December 15, 1989, the anticipated receipts from property taxes shall be computed based on the combined property taxes of each subdivision in the fiscal year immediately preceding consolidation.

The basic rule of statutory construction is to ascertain and give effect to legislative intention as expressed in the statute. Megan v. Boyd County, 133 Neb. 539, 276 N.W.2d 160 (1937); Ludwig v. Board of County Commissioners, 170 Neb. 600, 103 N.W.2d 838 (1960). The budget limitation imposed by section 77-3438 is based on the receipts from property taxes for the prior fiscal year and if the governing body budgeted no revenue from the prior fiscal year, then from the most recent fiscal year for which the governing body did budget to receive revenue. It is clear that the basis for the limitation is a previous budget established by a governing body. Accordingly, if no revenues were budgeted in a prior fiscal year, the budget limitations would not apply.

There are three general classes of expenditure limits which may be imposed on political subdivisions and other government bodies. Briefly summarized, the limitations include amounts of indebtedness which may be incurred, the amount of the tax levy, and limitations on budget amounts not exceeding actual receipts or expenditures for the previous year. A limitation of the taxing power of a municipality or county is not necessarily a limitation on expenditures or the power to incur debt. 64 C.J.S. Municipal Corporations, § 1847 (1949). While we have found no applicable Nebraska cases, other jurisdictions have held that no vote need be had regarding liabilities which do not come within statutory or constitutional provisions. State Bank & Trust Co. v. Madison County, 275 Ky. 501, 122 S.W.2d 99 (1938); Nelson v. Jackson, 97 Mont. 299, 33 P.2d 822 (1934). Further, in Attorney General

Opinion No. 227, February 20, 1980, it was concluded that provisions of the Political Subdivision Budget Limit Act, then in existence, applies to budgets not to tax levies and that any tax authorized may be levied.

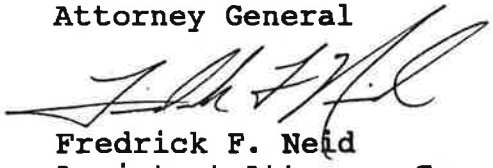
Upon review of section 77-3438, it is our opinion that the limitations imposed on budgets of political subdivisions do not apply to the initial levy of a tax by a newly-created political subdivision. Accordingly, a newly-created political subdivision is not required to obtain voter approval by special election prior to the initial tax levy.

You also inquire whether there is a limit to the initial tax levy other than the tax limit if a special election does not have to be conducted in order for a newly formed political subdivision to levy taxes in the first year of operation. We have reviewed the provisions of the Nebraska Budget Act, Neb. Rev. Stat. §§ 13-501 et seq. which includes a limit on the amount of tax that may be levied. Neb. Rev. Stat. § 13-508 (Reissue 1991) provides that a governing body and a levying board shall not certify nor levy an amount of tax greater than the amount determined under Neb. Rev. Stat. § 13-508 (Reissue 1991). The amount to be received from taxes is determined by the estimated expenditures, and required cash reserve if any, less beginning balances and income from all sources other than taxation. The amount of the tax levy cannot exceed this amount which is the amount to be shown in the proposed budget statement required to be filed. We are aware of no other limitation regarding the actual tax levy other than the determination of the amounts to be received from taxation provided in section 13-505 which is generally applicable to all political subdivisions.

Other constitutional and/or statutory limitations may apply depending on the class of political subdivision. For example, counties are constitutionally prohibited from assessing taxes in excess of express valuation limitations. See Article VIII, Section 5 of the Nebraska Constitution.

Sincerely yours,

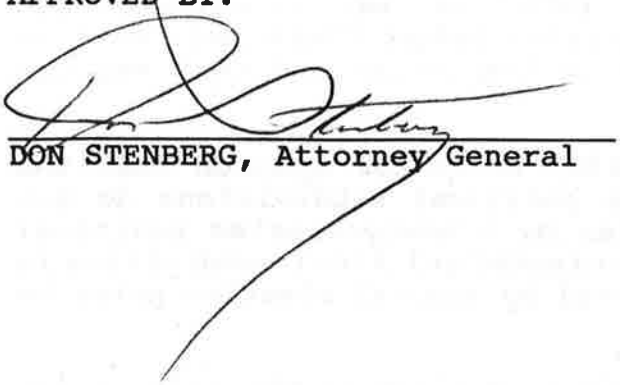
DON STENBERG
Attorney General



Fredrick F. Neid
Assistant Attorney General

21-2-7.18

APPROVED BY:



DON STENBERG, Attorney General