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REC.
STATE OF NEBRASKA
OFFICIAL
OCT 8 1992
DEPT. OF JUSTICE

DATE: October 9, 1992

SUBJECT: Access by the Auditor of Public Accounts to legislative telephone records in light of the Nebraska Public Records Statutes, and, in particular, Neb.Rev.Stat. § 84-712.05 (11) (Reissue 1987).

REQUESTED BY: John Breslow
Auditor of Public Accounts

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

From your correspondence to us, it appears that you are now beginning an audit of the Legislature in connection with your statutory responsibilities as Auditor of Public Accounts. As a part of that audit, you wish to review the telephone records of the Legislative Council of the Legislature to determine if the calls which were made were proper, and to determine if proper charges were assigned to the individuals/offices involved. The information you seek is apparently available on computer tapes in the Central Data Processing Division of the Department of Administrative Services (DAS). On the basis of Neb.Rev.Stat. § 84-712.05 (11) (Reissue 1987), which permits confidentiality for legislative phone records under the Public Records Statutes, you were denied access to the computerized telephone records in question by DAS. Consequently, you have requested our opinion as to whether Section 84-712.05 (11) may be used to deny you an opportunity to review legislative telephone records as a part of your audit.

Neb.Rev.Stat. § 84-712 (Reissue 1987) provides, in pertinent part:

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> Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, . . . are hereby fully empowered and authorized to examine the same, and to make memoranda and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business.

Under Neb.Rev.Stat. § 84-712.01 (Reissue 1987), "public record" is defined as:

> . . . all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Obviously, these statutes would allow members of the public to review the phone records of state legislators, and we said as much in Opinion of the Attorney General No. 46, March 14, 1983. Therefore, in 1983, the Legislature added subsection 11 to Neb.Rev.Stat. § 84-712.05 (Reissue 1987). Section 84-712.05 generally creates a list of categories of documents which may be withheld from the public at the discretion of the governmental agency involved. Subsection 11 of that section adds "[c]orrespondence, memoranda, and records of telephone calls related to the performance of duties by a member of the Legislature" to the list of documents which may be kept confidential. As a result of Subsection 11, members of the public can be denied access to the telephone records of state legislators, and Subsection 11 apparently forms the purported basis for the denial of access to documents involving your office.

While the Public Records Statutes clearly allow legislative phone records to be kept confidential in the face of access requests from the public, other statutes also have a bearing on your access to phone records for audit purposes. Specifically, Neb.Rev.Stat. § 81-1117.02 (Reissue 1987) deals with the release of computer file data, which presumably includes phone records, by DAS. Subsection (2) of Section 81-1117.02 provides:

> Any data which is a public record in its original form shall remain a public record when maintained in computer files and shall be provided to the Legislative Fiscal Analyst pursuant to section 50-420 and shall be made

> available to the Auditor of Public Accounts solely for use in the performance of audits prescribed by law.

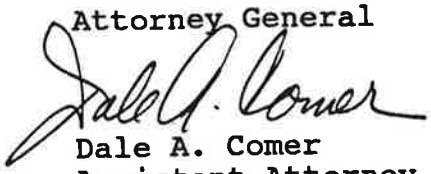
(emphasis added). Subsection (2) therefore appears to allow you access to computerized telephone records for audit purposes.

We do not believe that the Public Records Statutes, and in particular § 84-712.05 (11), form the basis to deny you access to legislative telephone records in light of § 81-1117.02 (2). First of all, the application of Section 84-712 itself is conditioned by the prefatory language in that statute which indicates that the Public Records Statutes apply "[e]xcept as otherwise expressly provided by statute." Moreover, courts will not give an interpretation to one statute which effectively nullifies another statute unless that is the clear legislative intent. Georgetowne Ltd. Partnership v. Geotechnical Services, Inc., 230 Neb. 22, 430 N.W.2d 34 (1988). If you are denied access to the phone records in question on the basis of Section 84-712.05 (11), then Section 81-1117.02 (2) has, in essence, been nullified. We see no clear legislative intent to bring about that result.

As a result, we agree with the assertion in your opinion request letter that Section 84-712.05 (11) must be read to prevent public access to legislative telephone records. We do not believe that statute also applies to deny you access to those documents in connection with a properly conducted audit which is authorized by statute. We would note that our conclusion with respect to this issue is generally consistent with a previous informal opinion of this office dated December 7, 1979, in which we determined that the Division of Communications and the Central Data Processing Division of DAS had a duty under Section 81-1107.02 to release telephone call detail information to the Auditor of Public Accounts for the purpose of conducting audits.

Sincerely yours,

DON STENBERG
Attorney General



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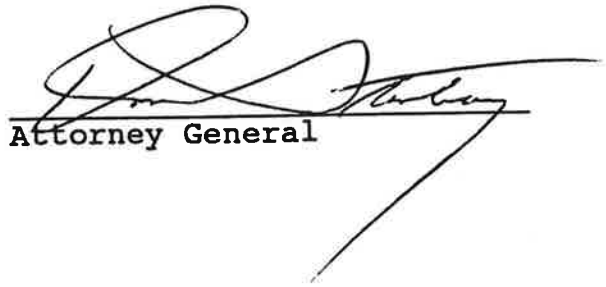
Assistant Attorney General

Approved by:



Attorney General