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STATE OF NEBRASKA
OFFICIAL
DEC 28 1992
DEPT. OF JUSTICE

DATE: December 17, 1992

SUBJECT: Application of Political Subdivision Budget Limitations to Tax Levy Provisions for City or Village Sewage Disposal Systems.

REQUESTED BY: Senator LaVon Crosby
Nebraska State Legislature

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 that school districts) contained in Neb. Rev. Stat. §§ 77-3437 to 77-3441 (Cum. Supp. 1992) to the statutory provisions governing tax levies by cities or villages for the financing of sewage disposal systems contained in Neb. Rev. Stat. § 18-501(4) (1991). You indicate that, should the budget limitations imposed on political subdivisions be deemed applicable to the levy provision contained in § 18-501(4), you may introduce amendatory legislation on this subject.

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 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 council of a city or the board of

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trustees of a village. "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. § 18-501 (1991) authorizes "[a]ny city or village in this state. . . to own, construct, equip, and operate,. . . a sewerage system. . . ." Subsection (3) of § 18-501 provides that a city or village may "make a special levy of not to exceed three and five-tenths cents on each one hundred dollars upon the actual value of all the taxable property within any such municipality, except intangible property,. . .", for "the purpose of owning, operating, constructing, maintaining, and equipping such sewage disposal plant and sewerage system,. . . ." In addition, subsection (4) of § 18-501 provides:

> In the event the present or proposed sewage disposal system of any city or village does not comply with the provisions of any other law relating to sewer systems, sewage disposal, or water pollution, such city or village shall levy each year a tax of seven cents on each one hundred dollars of actual valuation for such purpose until sufficient funds are available for the financing of a system in compliance with law. ***Such levy shall not be subject to the maximum tax levy limit.*** In the event any city or village is otherwise raising funds for such purpose, equivalent to such a levy, it shall not be required, in addition thereto, to make such levy. (Emphasis added).

Recently, in Op. Att'y Gen. No. 92105 (August 25, 1992), we addressed the applicability of the limits on political subdivision budgets imposed under §§ 77-3437 to 77-3441 to tax levy provisions for county or city ambulance service and for payment of insurance premiums or the cost of membership in a risk management pool by public agencies. The question addressed was whether language in these tax levy provisions providing that the levy of taxes authorized was permissible even if "in excess of any tax limitation imposed by statute" or "in addition to restrictions on the levy of taxes provided by statute" operated to "exempt" taxes levied for these purposes from the budget limitations imposed under §§ 77-3437 to 77-3441.

In this opinion, we discussed at length several prior opinions in which 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). Op. Att'y Gen. No. 92105 at 3-4 (*citing* 1979-80 Rep. Att'y Gen. 236-37; 327-29; and 490-91). We summarized the conclusions reached in our prior opinions as follows:

> [T]his 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. . . . 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.

With respect to the specific questions pertaining to the applicability of the budget limitations imposed under §§ 77-3437 to 77-3441 to the tax levy provisions for county or city ambulance services or payment of insurance premiums or the cost of membership in a risk management pool by public agencies, we concluded:

> 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 imposed 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. (Emphasis in original).

Based on for foregoing, it is our opinion that, while § 18-501(4) provides that the levy authorized "shall not be subject to

the maximum tax levy limit", such language does not constitute an exception to the budget limitations imposed on governing bodies of cities or villages pursuant to §§ 77-3437 to 77-3441. As we stated in a prior opinion addressing the Political Subdivision Limit Act of 1979:

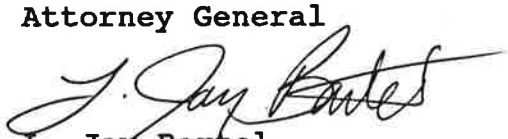
> The limitations of [the Political Subdivision Budget Limit Act of 1979] applies [*sic*] to budgets not to tax levies. Any tax authorized may be levied. The limit arises in the amount that may be spent, i.e. no budget exceeding seven percent may be adopted. As long as the subdivision remains within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

1979-80 Rep. Att'y Gen. 328-29.

We are mindful of the fact that § 18-511 provides that "[t]he provisions of Chapter 18, article 5, shall be independent of and in addition to any other provisions of the laws of the State of Nebraska with reference to sewage disposal plants and sewerage systems in cities and villages. . ., and that this section further provides that "[t]he provisions of this article shall not be considered amendatory of or limited by any other provision of the laws of the State of Nebraska." While an argument could be made that this latter language indicates a legislative intent to remove the provisions of article 5 from the effect of any other legislative act, we do not believe this language can be so broadly construed, at least to the extent that it cannot be viewed to create an exception to §§ 77-3437 to 77-3441. The budget limitations established pursuant to these provisions are not inconsistent with article 5, and, absent a clear conflict, must be given effect. Thus, we conclude that, to the extent that you wish to establish a clear exception to the budget limitations imposed under §§ 77-3437 to 77-3441 in these circumstances, amendatory legislation would be necessary.

Very truly yours,

DON STENBERG
Attorney General



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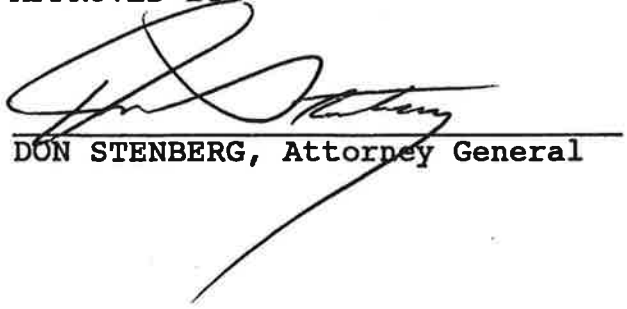

DON STENBERG, Attorney General