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NO.
STATE OF NEBRASKA
OFFICIAL
DEC 28 1992
DEPT. OF JUSTICE

DATE: December 11, 1992

SUBJECT: School Funds; Tax Equity and Educational Opportunities Support Act; If school districts, in which option students are actually enrolled, do not generate equalization aid pursuant to Neb. Rev. Stat. § 79-3806(1) (Supp. 1992) are entitled to additional state aid pursuant to Neb. Rev. Stat. § 79-3806(6) (Supp. 1992).

REQUESTED BY: Joe Lutjeharms, Commissioner of Education

WRITTEN BY: Don Stenberg, Attorney General
Harold Mosher, Senior Assistant Attorney General

The findings and intent of the Legislature in enacting the Tax Equity and Educational Opportunities Support Act (hereafter, the "Act") are stated in Neb. Rev. Stat. § 79-3802 (Supp. 1992). One of the stated goals is to "[a]ssure a greater level of equity in property tax rates for the support of the public school system. . . ." Neb. Rev. Stat. § 79-3802(2)(g) (Supp. 1992). To that end, the Act contains several provisions that assure school district with minimal financial resources will receive certain equalization aid from the State of Nebraska.

Obviously, equalization aid is not paid by the State of Nebraska to school districts with financial resources in excess of its statutory formula need. *See* Neb. Rev. Stat. § 79-3806(1) (Supp. 1992). On the other hand, equalization aid is paid to school districts by the State of Nebraska subject to certain conditions. You advise that the State Department of Education has construed the Act as outlined below and ask our opinion if the same is legally correct:

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1. If the district already generates equalization aid pursuant to Subsection 1 of § 79-3806, no calculation is made.

2. For districts not generating equalization aid, the Average Daily Membership (ADM) of Enrollment Option students from the most recently available complete data year is multiplied times the district's appropriate grade-level Tiered Cost Per Student (see § 79-3805). From this amount is subtracted the "categorical" Enrollment Option payment (see § 79-3415) the district received in the most recently available complete data year. The result is the "Enrollment Option Hold Harmless" aid for the district.

3. This "Enrollment Option Hold Harmless" aid is added to the other components of "State Aid" (§ 79-3803(21)): "Allocated Income Tax Funds" (§ 79-3804); "Rapid Growth Hold Harmless" (§ 79-3807); and "Equalization Aid" less its "Minimum Effort" deduction (§ 79-3806). Please note that, since the "Enrollment Option Hold Harmless" aid only applies to districts not receiving equalization, the "Equalization Aid" in this case would always be zero.

4. The total "State Aid" as outlined in item 3 above is due and payable to each school district provided that for the school years 1992-1993, 1993-1994, and 1994-1995, no school district, pursuant to Neb. Rev. Stat. § 79-3806(2) (Supp. 1992), is paid less than one hundred percent of the amount of State Aid it received pursuant to the School Foundation and Equalization Act for the school year 1989-1990.

Upon examining the same, we believe the calculations stated above are in accordance with the law and are hereby approved.

Very truly yours,

DON STENBERG
Attorney General

Harold I. Mosher
Senior Assistant Attorney General

Approved:

Attorney General

20-189-3