STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#93007

STATE OF NEBRASKA
OFFICIAL
FEB 10 1993
DEPT. OF JUSTICE

DATE: February 9, 1993

SUBJECT: Nebraska Corn Board authority for funding research; endowed faculty support and matching funds from for research which may be proprietary to the University of Nebraska.

REQUESTED BY: Nebraska Corn Development, Utilization and Marketing Board

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

The Nebraska Corn Development, Utilization and Marketing Board ("Corn Board") has asked for guidance regarding the allowable scope of funding the Board may provide. As indicated by the request letter, the Board appears to be searching for more precise spending boundaries in light of Op. Att'y Gen. No. 92095 (proposed expenditure of funds to support the construction of a genetics research center deemed beyond the statutory authorization of the Board). The Board wishes to finance endowed faculty support in an area of interest to the Board and/or to match funds with a private company to develop a process which may or may nor be proprietary to the University of Nebraska.

ISSUES

Whether the Nebraska Corn Resources Act provides statutory authority for the Nebraska Corn Development, Utilization and Marketing Board to:

1. Use funds to finance endowed faculty support in an area of interest to the Nebraska Corn Board?

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

printed on recycled paper

2. Use funds as a match with a private company to fund University development of a process which may or may not be proprietary to the University.

CONCLUSIONS

1. The Nebraska Corn Board may finance endowed faculty support to the extent that such faculty member engages in or directs research, education, market development or promotion germane to corn.

2. The Nebraska Corn Board may use funds as a match with a private company to finance University development of a process, to the extent the process is related to research or market development germane to corn.

DISCUSSION

Endowed Faculty Support

This office has consistently taken the position that the Nebraska Corn Board has only that authority specifically conferred upon it by statute or by a construction necessary to achieve the purpose of the relevant act. Op. Att'y Gen. No. 92095 (July 27, 1992); Op. Att'y Gen. No. 91078 (July 18, 1991) (citing City of ***Auburn v. Eastern Nebraska Public Power District***, 179 Neb. 439, 138 N.W.2d 629 (1965); ***In re Application A016642***, 236 Neb. 671, 705, 463 N.W.2d 591 (1990)). Corn Board authority includes: "(1) To develop and direct any corn development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities." Neb. Rev. Stat. § 2-3622(1) (Reissue 1991).

In Op. Att'y Gen. No. 92095, regarding the proposed expenditure of funds for the construction of a research center, we stated that the three commodity boards have statutory authority to make grants or enter into contracts with the University of Nebraska for research. As Board authority for construction was limited to ethanol facilities, "expressio unius est exclusio alterious" was applied to conclude that any other construction was excluded by lack of express mention. Id.

In regard to research, however, the Legislature has given more broad authorization. "Such program may include a program to make grants and enter into contracts for research," Neb. Rev. Stat. § 2-3622(1). The statutory language including the authority to make grants was apparently adopted in response to 1981 Rep. Att'y Gen. 155 (dated December 7, 1981), which determined the Corn Board could not make grants to public or private bodies. This office found

that prior to this change, the Legislature did not intend to authorize the Corn Board, "To bestow, confer, or make a gift of money under its authority or control to any private or public body." Id. Subsequent to this opinion, the Legislature added language authorizing grants from the Corn Board, LB 505 (1983).

Thus, to the extent that financial support for endowed faculty relates to research, education, market development, utilization or promotion of corn, such support appears to be authorized by the Legislature.

Matching Private Funds

The Corn Board, likewise, appears to be within its statutory authority if it chooses to match private funds for the development of a "process" by the University, which may or may not be proprietary to the University. The Board is clearly authorized ". . . to make grants and enter into contracts for research." Neb. Rev. Stat. § 2-3622(1), and "is limited to cooperating and contracting with the . . . University of Nebraska and other proper local, state, or national organizations, public or private." Neb. Rev. Stat. § 2-3634.

Concern may be raised as to whether such an expenditure might violate Article III, Section 18 of the Nebraska Constitution, which prohibits the granting of a special or exclusive privilege. This office, in Op. Att'y Gen. No. 64 (March 30, 1983), reviewed the propriety of LB 505 which would allow the Wheat (and other) Boards to grant from their funds to individuals, firms, companies and other persons for the encouragement and construction of alcohol plants. We stated that although the specific act of encouraging alcohol plants may also benefit individuals and companies, the general purpose fell within the promotion of the grain industries, and thus was not a special privilege. Likewise, matching private funds for University proprietary research may benefit a private company or the University, but as long as the research promotes corn development, utilization or marketing, the activity appears constitutional.

Given the express authority of the Corn Board for research and cooperation with the University and private organizations, and the

prima facie constitutionality of such an expenditure, matching of funds to develop a process appears to be within Board authority.

Sincerely yours,

DON STENBERG
Attorney General

Steve Grasz
Deputy Attorney General

Approved By:

Attorney General

* The assistance of Mr. Bruce Gerhardt, law clerk, in preparing this opinion is gratefully acknowledged.

3-1072-3