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STATE OF NEBRASKA
OFFICIAL
MAR 5 1993
DEPT. OF JUSTICE

DATE: March 4, 1993

SUBJECT: Duties of the Commission for Postsecondary Education to Review and Approve or Disapprove All Capital Construction Projects Proposed by the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges Pursuant to Neb. Rev. Stat. §§ 85-401 to 85-411 (1987), as Amended

REQUESTED BY: Senator Kurt A. Hohenstein
Nebraska State Legislature

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

Question Presented

As used in the Coordinating Commission for Postsecondary Education Act, do the words "tax funds" include funds which are pledged to pay the principal and interest on revenue bonds issued pursuant to Neb. Rev. Stat. §§ 85-401 to 85-411 (1987), as amended.

Discussion

Subject to certain conditions, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges have statutory authority to issue revenue bonds and to repay the principal and the interest thereon solely out of sources other than funds derived from taxation. Neb. Rev. Stat. § 85-403 (Cum. Supp. 1992) specifically states, in part, as follows:

> Bonds issued under the provisions of sections 85-403 to 85-411 are not an obligation of the State of Nebraska, and no tax shall ever be levied to raise funds for the payment thereof or interest thereon. The bonds shall not

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> constitute a debt of the board issuing the same and shall be paid solely out of money derived from their revenue and earnings as provided in sections 85-403 to 85-411. * * *.

Certain terms, as used in the Coordinating Commission for Postsecondary Education Act, are defined by statute. Neb. Rev. Stat. § 85-1402(7) (Supp. 1992) states: "Tax funds designated by the Legislature shall mean all state tax revenue and all property tax revenue." Thus, funds available from the operation of facilities which are financed by issuing revenue bonds are not "tax funds" as those words are used in the Coordinating Commission for Postsecondary Education Act but are funds which the Legislature has solemnly pledged for the payment of principal and interest on revenue bonds as provided in Neb. Rev. Stat. §§ 85-403 to 85-411 (1987), as amended.

We wish to point out that the Coordinating Commission for Postsecondary Education has certain duties with respect to particular capital construction projects, including those funded by revenue bonds. Specifically, it has a duty to "review and approve or disapprove all capital construction projects proposed by the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges pursuant to Neb. Rev. Stat. §§ 85-401 to 85-411 (Cum. Supp. 1992). *See* Neb. Rev. Stat. § 85-1415 (Cum. Supp. 1992). Certain capital construction projects, of course, also require legislative approval.

Respectfully submitted,

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APPROVED:

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20-02-14

cc: Patrick J. O'Donnell
Clerk of the Legislature