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STATE OF NEBRASKA
OFFICIAL
APR 27 1993
DEPT. OF JUSTICE

DATE: April 23, 1993

SUBJECT: Whether funding for the expenses incurred by the Secretary of State in connection with his service on the Nebraska Brand Committee should be placed in the Brand Committee budget or the budget of the Secretary of State.

REQUESTED BY: Senator Scott Moore
Nebraska State Legislature

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

On behalf of the Appropriations Committee of the Legislature, you have requested our opinion as to whether funding for reimbursement of the expenses incurred by the Secretary of State as a result of his duties on the Nebraska Brand Committee (Brand Committee) should be placed in the budget of the Brand Committee or in the budget of the Secretary of State. As is discussed below, we believe that the Appropriations Committee has the discretion to recommend placement of the funds in question in either budget.

The responsibilities of the Brand Committee are set out generally in ***Neb. Rev. Stat. §§*** 54-101 to 54-169 (1988, Cum. Supp. 1992). Under Section 54-153, the Nebraska Secretary of State is the chairperson of the Brand Committee, and four additional members of that committee are appointed by the Governor.

Section 54-140 provides as follows with respect to expenses incurred by members of the Brand Committee:

> The ***appointed*** members of the committee shall be paid their actual and necessary traveling expenses in attending meetings of the committee or in performing any

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> other duties that are prescribed in sections 54-101 to 54-168 and 54-415, as provided for in sections 81-1174 to 81-1177 for state employees.

(emphasis added). In addition to Section 54-140, the statutes dealing generally with reimbursement of expenses, ***Neb. Rev. Stat. §§*** 81-1174 to 81-1182 (1987, Cum. Supp. 1992), authorize reimbursement of expenses incurred by the members of committees created by statute (such as the Secretary of State in this instance), and establish procedures for payment of those expenses. Since Section 54-140 appears to apply only to appointed members of the Brand Committee, and since the Secretary of State would be allowed expenses under the more general reimbursement statutes, you asked which budget should receive the funding for the expenses of the Secretary of State.

There are some statutes which deal with the expenses of members of statutory bodies which also specifically set out from which appropriation those expenses should be paid. For example, ***Neb. Rev. Stat. §*** 39-2202 (1988), dealing with the Nebraska Highway Bond Commission, states:

> All members of the [Highway Bond] commission shall be entitled to reimbursement for all necessary expenses incurred in connection with the performance of their duties as members as provided in sections 81-1174 to 81-1177 for state employees. ***Such compensation shall be paid out of the appropriation for the State Highway Commission.***

(emphasis added). However, neither Section 54-140 nor Sections 81-1174 to 81-1182 contain such specific directions for the appropriation of expenses incurred by members of the Brand Committee. In addition, we believe that the language of Section 54-140 dealing with the expenses of appointed members of the Brand Committee simply authorizes payment of the expenses incurred by those individuals. It does not require that only those individuals may be paid from the Brand Committee's budget.

It is clear that the Legislature has plenary or absolute power over appropriations. ***State ex rel. Meyer v. State Board of Equalization and Assessment***, 185 Neb 490, 176 N.W.2d 920 (1970). As a result, the Legislature may make appropriations with those conditions and those restrictions as it wishes within constitutional limitations. ***Id.*** Given the Legislature's authority over appropriations and the absence of any specific direction in existing statutes, we believe that the Appropriations Committee may

use its discretion and recommend placement of the funding for the expenses of the Secretary of State in either the budget of the Brand Committee or the budget of the Secretary of State.

Sincerely yours,

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cc. Patrick O'Donnell
Clerk of the Legislature

APPROVED BY:

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