DON STENBERG
Attorney General

STEVE GRASZ
M GRIMMINGER
Deputy Attorneys General

WARREN D. LICHTY
Assistant Attorney General
Chief, Roads Section

OFFICE OF THE ATTORNEY GENERAL

STATE OF NEBRASKA

STATE HIGHWAY BUILDING
PO BOX 94759
LINCOLN NE 68509-4759

Telephone (402) 479-4611
FAX (402) 479-4325

ASSISTANT ATTORNEYS GENERAL

Gary R. Welch
Robert G. Avey
John E. Brown
William J. Orester
Jeffery T. Schroeder
K. Osi Onyekwuluje

#93070
NO.
STATE OF NEBRASKA
OFFICIAL
AUG 30 1993
DEPT. OF JUSTICE

DATE: August 27, 1993

SUBJECT: Purchase of specialized transit vehicles by the Department of Roads for public transportation assistance provided by the Federal Transit Administration for elderly and handicapped people.

REQUESTED BY: Allan L. Abbott
Director-State Engineer

WRITTEN BY: Don Stenberg, Attorney General
Warren D. Lichty, Assistant Attorney General

Your question arises out of the program whereby the Department of Roads (Department) provides vans and buses for agencies desiring to provide public transportation for elderly and handicapped people. This program has been in existence since the Governor's designation of the Department in 1974 as program administrator pursuant to 49 U.S.C. § 16(b)(2). In 1975, the Nebraska Public Transportation Act was passed. Neb. Rev. Stat. § 13-1204 (1993) authorizes the Department to contract with various agencies to provide public transportation services and Neb. Rev. Stat. § 13-1205 (1993), directs the Department to administer federal and State programs providing financial assistance to public transportation and authorizes it to exercise all other powers necessary and proper for the discharge of its duties.

Pursuant to this authority, the Department lets bids for the acquisition of such vans and buses as are needed, and thereafter transfers them to the qualified subrecipients whose applications have been accepted. The question has now been raised as to the effect of the Motor Vehicle Industry Licensing Act, Neb. Rev. Stat., Chapter 60, article 14, upon the aforesaid program, and whether the Licensing Act restricts the Department as to with whom it may deal. As you point out in your question, Neb. Rev. Stat. § 60-1401.02 (33) (1992) provides, inter alia, "Nothing in

Chapter 60, article 14, shall apply to the State of Nebraska or any of its agencies or subdivisions. . . ."

Since the Department is completely exempt from the Motor Vehicle Dealers Licensing Act, Chapter 60, article 14, then the Act places no constraints on the Department. Therefore, the Department may, without being licensed as a motor vehicle dealer, acquire vehicles from any low bidder and transfer them to any approved transportation provider. You should be aware, however, that the provisions of Chapter 60, article 14, do apply to persons or entities selling motor vehicles to the State and those sellers must comply with State licensure laws according to the terms thereof. The State should not knowingly participate in a transaction in which the seller is in violation of State law.

Sincerely,

DON STENBERG
Attorney General

Warren D. Lichty
Assistant Attorney General

Approved:

Attorney General