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#96009
 No. STATE OF NEBRASKA
OFFICIAL
 FEB 1 1996
 DEPT. OF JUSTICE

DATE: January 31, 1996

SUBJECT: LB 69; Authority of County Boards Over the Election Commissioners in Those Counties Where the Election Commissioners are Currently Appointed by the Governor

REQUESTED BY: Senator Kate Witek
 Nebraska State Legislature

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

You enclosed a copy of LB 69, which you introduced and which is currently pending before the Legislature, with your opinion request letter. You then posed the following question to us with respect to that bill, "[i]s LB 69 necessary to give the county board authority or oversight powers over the election commissioner in those particular metropolitan counties where the commissioner is appointed by the Governor?" For the reasons discussed below, we believe that the answer to your question is "yes."

In 1994, you asked us a similar question. In that instance, you wished to know whether the election commissioner in counties over 50,000 in population was "responsible" to the Governor or to the county board under LB 76, a substantial revision of the election laws before the Legislature at that time. In our Op. Att'y Gen. No. 94008 (February 9, 1994), we responded by noting that, under LB 76, the election commissioners at issue were "responsible" to the Governor, in the sense that the Governor had authority under the bill to remove those election commissioners for specified misconduct or incompetence. LB 76 was subsequently enacted by the Legislature and approved by the Governor on April

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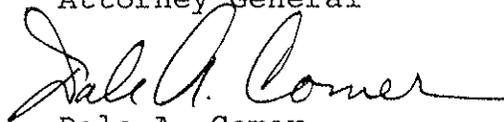
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15, 1994. The sections of the bill which allowed the Governor to appoint election commissioners for counties having a population over a certain level and to remove those commissioners for specified misconduct remained intact, and are codified at *Neb. Rev. Stat. §§ 32-207 and 32-214 (Cum. Supp. 1994)*, respectively.

Among other things, your LB 69 would amend § 32-207 so that the election commissioners in counties over 100,000 inhabitants who are currently appointed by the Governor would be appointed by the county board. In addition, LB 69 would amend § 32-214 to allow the county board to remove election commissioners in those same counties for specified misconduct. To the extent that having the power to appoint and remove the election commissioners currently appointed by the Governor is synonymous with having "authority or oversight powers" over those officials, we believe that LB 69 is "necessary" to bring about that result in light of the current statutes.

Sincerely yours,

DON STENBERG
Attorney General

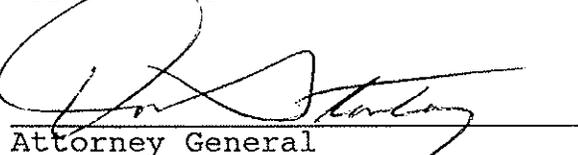


Dale A. Comer
Assistant Attorney General

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

Approved by:


Attorney General