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NO.
STATE OF NEBRASKA
OFFICIAL
AUG 28 1996
DEPT. OF JUSTICE

DATE: August 22, 1996

SUBJECT: Application of the Preliminary Property Tax Rate Provisions of Section of LB 1085 for Political Subdivisions

REQUESTED BY: John Breslow, Auditor of Public Accounts

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

LB 1085 was passed during the Second Session of the Ninety-Fourth Legislature and approved by the Governor on April 16, 1996. This comprehensive bill amended and repealed various statutory provisions and also added new sections. New section 54 of LB 1085 requires that the county clerk set a preliminary tax rate for each political subdivision which levied property taxes in the county the previous year.

You have submitted a list governmental entities that submit budget reports to the Auditor of Public Accounts and you inquire, '[w]hich of these governing bodies are considered "political subdivisions" subject to Section 54 of LB 1085 for which a preliminary rate must be set?" We generally concur with your view that all governmental subdivisions with property tax levy authority are political subdivisions as that term is meant in LB 1085 and related statutes. Neb. Rev. Stat. §§ 77-1601 to 77-1627 (1990 Cum. Supp. 1994 and Supp. 1995) comprise a series of statutes relating to the authority, duties, and responsibilities of counties for levy of tax amounts within the counties. Section 54 of LB 1085 (to be codified at § 77-1601.01 in part states:

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> On or before September 10 each year, the county clerk shall set a preliminary property tax rate for each political subdivision which levied property taxes in the county the previous year. . . . The preliminary levy shall be published for each political subdivision in a newspaper of general circulation in the county on or before September 15. The preliminary levy shall be considered as the final levy as set by the county board of equalization in section 77-1601 unless changed by the political subdivision pursuant to section 55 of this act prior to October 15.

(Emphasis added).

The broad construction of the term, "political subdivision," to mean a governmental entity performing general or special government functions with property tax levy authority for purposes of section 54 is consistent with legislative intent. Legislative intent is the cardinal rule in statutory construction to ascertain the meaning of a legislative act. ***Iske v. Papio Nat. Resources Dist.***, 218 Neb. 39, 352 N.W.2d 172 (1984). Further, the Nebraska Supreme Court in ***Pump & Pantry, Inc. v. City of Grand Island***, 233 Neb. 191, 444 N.W.2d 312 (1989), confirmed the principle that a court may examine history of the act in question to ascertain legislative intent and to give effect to that intent. It is established that legislative history of an act includes the record floor explanation or debate. ***Spence v. Terry***, 215 Neb. 810, 340 N.W.2d 884 (1983).

The legislative history of LB 1085 is informative and reflects that the provisions of the act are to apply to each government body of the state with property tax levy authority. The floor debate includes the following discourse:

> SENATOR HILGERT: . . . This is the part of the bill that I'm most excited about that I think will have a very real impact on how this government in Nebraska and the 3,004 political subdivisions does business. Section 43 and 44 proposes to change the procedure of levying taxes by political subdivisions. County clerks would set a preliminary rate for each subdivision by September, the 10th, of each year based on the previous year's valuation. The preliminary rate would then be published in newspapers of the areas. . . .

Floor Debate on LB 1085, 94th Legis. 2nd Sess. 1996 (March 19, 1996 p. 13127) (Statement of Senator Hilgert). (emphasis added). Senator Hilgert's statement indicates that the term, political

subdivision, includes all governmental subdivisions levying property taxes within a county for purposes of the provisions of LB 1085.

The list of government subdivisions you have furnished has been reviewed. For the most part, the public entities are political subdivisions with tax levy authority subject to the preliminary property tax rate provisions of LB 1085. Set forth below is our analysis of the various government subdivisions you have inquired about.

AGRICULTURAL SOCIETIES

We believe that a county agricultural society organized under the provisions Neb. Rev. Stat. § 2-201 (Cum. Supp. 1994) is a political subdivision as that term is meant and used for tax levy and assessment purposes of section 54 of LB 1085. The amount of tax authorized by section 2-201 is to be assessed, levied, and collected as other county taxes. You note that the Attorney General previously issued opinions addressing the term political subdivision for purposes of the Nebraska Budget Act.[1] See Report of Attorney General, 1979-80, Op. No. 98, p. 141; Op. Att'y Gen. No. 219 (July 23, 1984); Op. Att'y Gen. No. 95057 (July 7, 1995).

County agricultural societies are subject to the provisions of the Nebraska Budget Act. Neb. Rev. Stat. § 13-503 (Cum. Supp. 1994) includes the board of directors of a county agricultural society within the meaning of a governing body for purposes of the Act. The preliminary property tax rate provisions of section 54 of LB 1085 are therefor applicable to county agricultural societies.

AIRPORT AUTHORITIES

Airport authorities are political subdivisions for purposes of the provisions of section 54 of LB 1085. The establishment of city airport authorities and joint airport authorities is authorized in Neb. Rev. Stat. §§ 3-501 to 3-716 (1991 and Cum. Supp. 1994). A city airport authority is a body politic and corporate with property tax levy authority pursuant to the provisions of Neb. Rev. Stat. §§ 3-501 (1991), 3-504 (Cum. Supp. 1994) and 3-504.02 (1991).

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[1]Sections 2-958, 3-504, 12-914, 13-501 to 13-513, 13-515, 16-702, 16-706, 16-718, 17-702, 17-703, 17-708, 17-711, 17-715, 17-718, 18-1006, 19-1302, 23-132, 23-904, 23-920, 23-3519, 23-3552, 31-513, 35-509, 39-1621, 39-1634, 46-543, 46-544, 51-316, 71-1611, 79-435, 79-1007.02, and 79-2210 shall be known and may be cited as the Nebraska Budget Act.

Similarly, county airport authorities and joint airport authorities are bodies politic and corporate with property tax levy authority reposed in Neb. Rev. Stat. §§ 3-611 (Cum. Supp. 1994), 3-605 (Cum. Supp. 1994), 3-701 and 3-707 (Cum. Supp. 1994).

These authorities are included within the definition of governing bodies for purposes of the Nebraska Budget Act. ***See*** section 13-503. And, our Nebraska Supreme Court, in ***Willms v. Nebraska City Airport Authority***, 193 Neb. 567, 228 N.W.2d 275 (1975) concluded that airport authorities are subject to the provisions of the Nebraska Budget Act.

CEMETERY DISTRICTS

It is our opinion that these districts are political subdivisions for purposes of application of the provisions of section 54 of LB 1085. The districts are government subdivisions created under Neb. Rev. Stat. §§ 12-909 to 12-923 (1991 and Cum. Supp. 1994). Further, the board of trustees of a cemetery district is included as a governing body as that term is defined and used in the Nebraska Budget Act.

CITIES, VILLAGES AND TOWNSHIPS

Of course, cities, villages and townships created and established pursuant to extant state law are political subdivisions exercising governmental functions with property tax levy authority. The city council of a city, the board of trustees of a village, and the town board of a township are included within the term, "governing body" for purposes of the Nebraska Budget Act. ***See*** Section 13-503(1). Accordingly, it is our conclusion that these entities are political subdivisions for purposes of LB 1085 and subject to the provisions of section 54.

COMMUNITY COLLEGES

Community colleges are political subdivisions with property tax levy authority and therefor, subject to the preliminary property tax rate provisions of section 54 of LB 1085. A community college is a body corporate pursuant to Neb. Rev. Stat. § 85-1505 (1994). Authority to certify to the county board of equalization a property tax levy not to exceed nine cents for each one dollar on the taxable valuation of property within the community college area is reposed in Neb. Rev. Stat. § 85-1517 (Supp. 1995). The Board of Governors of a community college is a governing body as that term is defined and used in the Nebraska Budget Act.

COMMUNITY HALL

No statutory reference to a governmental entity entitled or styled as a community hall in the context of a public body or political subdivision has been found. Thus, it is our view that a community hall is not a political subdivision as that term is meant and used for purposes of the Nebraska Budget Act and LB 1085, § 54. It is likely that a community hall or similar facility may be part of the operations of a city, village or township.

COMMUNITY REDEVELOPMENT AUTHORITIES

We believe that a community redevelopment authority established under the Community Development Law, Neb. Rev. Stat. §§ 18-2101 to 81-2144 (1991, Cum. Supp. 1994 and Supp. 1995) is a political subdivision and subject to the preliminary property tax rate provisions of LB 1085. The authorities constitute public bodies corporate and politic with the power to certify to the governing body of the city an amount tax not to exceed two and six tenths on each one hundred dollars upon the taxable value of the property in the city. ***See*** Neb. Rev. Stat. § 18-2107 (Supp. 1995).

COUNTIES

Counties are political subdivisions of the state established pursuant to extant law with the authority to levy, assess and collect property taxes. Further, the county board of the county is included within the definition of governing body for purposes of the Nebraska Budget Act. Accordingly, we conclude that counties are political subdivisions subject to the provisions of section 54 of LB 1085.

DRAINAGE DISTRICTS and SANITARY DRAINAGE DISTRICTS

The districts having special purpose government powers and functions may be organized by district courts or by landowners. The powers of the districts include authority to levy property taxes. Neb. Rev. Stat. §§ 31-301 to 31-533 (1993 and Supp. 1995).

The governing body of a sanitary drainage district is the board of trustee subject to the provisions of the Nebraska Budget Act. ***See*** section 13-503. Accordingly, the districts are subject to preliminary property tax rate provisions of LB 1085.

FIRE PROTECTION DISTRICTS

Rural and suburban fire protection districts organized under the provisions of Neb. Rev. Stat. §§ 35-501 to 35-536 (1993, Cum.

Supp. 1994 and Supp. 1995) are bodies corporate and politic for the purpose of providing the same type of protection against loss or destruction by fire as is available to residents of incorporated cities and villages.

The districts have property tax levy authority and the tax is collected as other taxes are collected in the county under the provisions of Neb. Rev. Stat. § 35-509 (1993). The board of directors of the districts are expressly included within the definition of a governing body for purposes of the Nebraska Budget Act. We therefor conclude that the provisions of section 54 of LB 1085 are applicable to these political subdivisions.

GROUNDWATER CONSERVATION DISTRICTS AND RECLAMATION DISTRICTS

Ground water conservation districts are bodies politic with property tax levy authority pursuant to the provisions of Neb. Rev. Stat. §§ 46-624 and 46-431 (1993). Reclamation districts are public bodies corporate and politic created pursuant to the provisions of Reclamation Act, Neb. Rev. Stat. §§ 46-501 to 46-573 (1993 and Cum. Supp. 1994). Reclamation districts have property tax levy authority under Neb. Rev. Stat. § 46-555 (1993) and the board of directors of a reclamation district is a governing body as that term is defined in the Nebraska Budget Act. Accordingly, we believe that ground water conservation districts and reclamation districts, duly organized, are political subdivisions for purposes of LB 1085.

HISTORICAL SOCIETIES

The only historical society we have knowledge of is the Nebraska State Historical Society which is an agency of the State. ***See*** Neb. Rev. Stat. § 82-101 (1994). The Historical Authority has no property tax levy authority and therefore not subject to the provisions of LB 1085.

HOSPITAL DISTRICTS

Hospital districts are political subdivisions organized and established under the provisions of the Nebraska Local Hospital District Act, Neb. Rev. Stat. §§ 23-3528 to 23-3552 (1991, Cum. Supp. 1994 and Supp. 1995). The board of directors of a hospital district is included within the meaning of "governing body" as that term is defined in the Nebraska Budget Act. The districts are bodies corporate and politic with the power and authority to exercise the right of eminent domain and for levy of property taxes under the provisions of Neb. Rev. Stat. §§ 23-3547 and 23-3552 (Cum. Supp. 1994). Based on these statutory provisions, hospital

authorities are political subdivisions subject to the preliminary property tax rate provisions of LB 1085.

LEVEE DISTRICTS and NATURAL RESOURCES DISTRICTS

Our review does not disclose any independent statutory authority for the creation of levee districts under current law. However, we note that certain special-purpose districts and bodies established under repealed statutes have been merged with natural resources districts under the provisions of Neb. Rev. Stat. § 2-3206 (1991). You have also inquired whether natural resources districts are subject to the provisions of LB 1085.

We believe that natural resources districts are political subdivisions vested with government powers and functions. ***See*** Neb. Rev. Stat. §§ 2-3228 to 2-32,101 (1991 and Cum. Supp. 1994). The Board of Directors of a natural resources district is a governing body for purposes of the Nebraska Budget Act. Further, each district has the authority to levy tax upon the property with the district and the levy shall be certified to each county which in whole or in part is included within the district under the express provisions of section 2-3225. Accordingly, the preliminary tax rate provisions of LB 1085 are applicable to these districts.

PUBLIC BUILDING COMMISSIONS

Public building commissions are governmental subdivisions established under and pursuant to the provisions of Neb. Rev. Stat. §§ 13-1301 to 13-1312 (1991 and Cum. Supp. 1994) with the authority to levy and assess taxes under the express provisions of section 13-1304. As you may recall, the issue whether the requirements of the Nebraska Budget Act are applicable to public building commissions was the subject of litigation before the Lancaster County District Court in ***Lincoln-Lancaster County Public Building Commission v. John Breslow***, Case No. 492-212 (1993). In this case, it was the position of the Auditor of Public Accounts that the Public Building Commission was a political subdivision subject to the provisions of the Nebraska Budget Act. The case was dismissed by the Court on procedural grounds. The dispute was resolved by agreement of the parties that the Building Commission would file its budget report with the Auditor's Office.

We have reviewed the statutory provisions and no substantive changes have been enacted. Further, your office has not provided with any information that the position of the Auditor of Public Accounts has changed with respect to application of the Budget Act to public building commissions. For these reasons, it is our opinion that the operative provisions of LB 1085 pertaining to

preliminary tax rates are applicable to public building commissions.

RAILROAD TRANSPORTATION DISTRICTS

For purposes of our analysis, we assume your inquiry pertains to railroad transportation safety districts established under the provisions of Neb. Rev. Stat. §§ 74-1301 to 74-1309 (1990. Cum. Supp. 1994 and Supp. 1995). Railroad transportation safety districts are special purpose entities with powers to perform limited governmental functions related to railroad facilities crossings. The districts have acquisition rights, through exercise of the power of eminent domain, and tax levy authority under the provisions of Neb. Rev. Stat. § 74-1305 (Supp. 1995) and § 74-1306 (Cum. Supp. 1994). It is our opinion that these districts are subject to the provisions of the Nebraska Budget Act and LB 1085.

RECLAMATION DISTRICTS

Reclamation districts are created pursuant to the provisions of the Reclamation Act, Neb. Rev. Stat. §§ 46-501 to 46-573 (1993, Cum. Supp. 1994 and Supp. 1995). The districts are governed by an elected board of directors with the power to levy and collect taxes. ***See*** Neb. Rev. Stat. §§ 46-542 to 46-545 1993 (Supp. 1995). The board of directors of a reclamation district is expressly included within the term of governing body in section 13-503 of the Nebraska Budget. We believe therefore that a reclamation district is a political subdivision for purposes of application of the provisions of section 54 of LB 1085.

ROAD IMPROVEMENT DISTRICTS

Road Improvement districts are special purpose governmental subdivisions established to effect road, highway or street improvements. Nebraska statutes provide for three classes of districts. Special improvement districts are established under the provisions of Neb. Rev. Stat. §§ 39-1601 to 39-1636.01 (1993, Cum. Supp. 1994 and Supp. 1995). Road districts are created by the provisions of Neb. Rev. Stat. § 38-1637 (1993) and rural road improvements districts are established under the provisions of the Rural Road Improvement Act, Neb. Rev. Stat. §§ 39-1638 to 38-1637 and 39-1649.

It is our conclusion that the districts are political subdivisions performing governmental functions that are subject to the provisions of LB 1085.

RURAL WATER DISTRICTS

Rural water districts are formed pursuant to Neb. Rev. Stat. §§ 46-1001 to 46-1026 (1993 and Supp. 1995). The districts exercise governmental powers including the power of eminent domain. Accordingly, we believe the entities are political subdivisions. However, these district do not have the authority to levy and collect property taxes. Since the districts do not levy taxes, they are not subject to preliminary property tax rate provisions of LB 1085.

SANITARY AND IMPROVEMENT DISTRICTS

Sanitary and improvement districts are political subdivisions organized under Neb. Rev. Stat. §§ 31-701 to 31-770 (1993, Cum. Supp. 1994 and Supp. 1995). The districts have the power to levy taxes upon the taxable property in the district and certify the levy to the county clerks in the counties in which the district is located. See Neb. Rev. Stat. § 31-711 (Supp. 1995). The provisions of LB 1085 are therefore applicable to sanitary improvement districts.

SCHOOL DISTRICTS

The various school districts of the state established by statute pursuant to the provisions of Neb. Rev. Stat. §§ 79-101 to 79-1112 (1994 and Supp. 1995) are political subdivisions. The school board of a district is included within the definition of governing body as that term is used in the Nebraska Budget Act. The tax levy authority is set in Neb. Rev. Stat. § 79-432 (1994) for Class I, II, III and VI school districts. The levy authority for class IV school districts is provided in Neb. Rev. Stat. § 79-438.13 (1994) and the tax levy authority for class V districts is reposed in Neb. Rev. Stat. § 79-1007.01 (1994). We believe the preliminary property tax rate provisions of LB 1085 are applicable to school districts.

TOWNSHIPS

We have previously concluded above that townships are political subdivisions subject to the provisions of the Nebraska Budget Act and section 54 of LB 1085.

TRANSIT AUTHORITY OF THE CITY OF OMAHA

The Transit Authority of the City of Omaha is government subdivision established under the provisions of the Metropolitan

Transit Authority Act, Neb. Rev. Stat. §§ 14-1801 to 14-1826 (1991 and Cum. Supp. 1994). The Authority is a public body corporate and politic and possesses all necessary powers of a governmental subdivision of the state by the express provisions of Neb. Rev. Stat. §§ 14-1804 and 14-1805 (1991). The Authority is authorized by Neb. Rev. Stat. § 14-1821 (Cum. Supp. 1994) to certify a tax levy on the taxable value of property in the city to the city council. We therefore conclude that the Authority is a political subdivision subject to the preliminary property tax rate provisions of LB 1085.

Sincerely yours,

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