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NO.
STATE OF NEBRASKA
OFFICIAL
SEP 26 1996
DEPT. OF JUSTICE

DATE: September 24, 1996

SUBJECT: Education Innovation Fund Grants

REQUESTED BY: Ross N. Tegeler, Chairman
Excellence In Education Council

WRITTEN BY: Don Stenberg, Attorney General
Lauren L. Hill, Assistant Attorney General

On behalf of the Excellence In Education Council ["Council"], you have requested a legal opinion as to whether the Council is vested with authority to create a second category of "major competitive grants" given the current law requirements governing awards made from the Education Innovation Fund. ***See*** Neb. Rev. Stat. § 9-812 (Supp. 1995, as amended by 1996 Neb. Laws, LB 1069, § 1 and 1996 Neb. Laws, LB 900, § 1015). The Council is considering the possibility of creating a second major competitive grant category which would require a simplified application process and which would provide for total grant awards in a lesser amount than those currently awarded by the Governor.

Our analysis of Neb. Rev. Stat. § 9-812 is directed by the requirement that "[w]here the words of a statute are plain, direct, and unambiguous, no interpretation is needed to ascertain the meaning." ***Gillam v. Firestone Tire & Rubber Co.***, 241 Neb. 414, 418, 489 N.W.2d 289, 292 (1992) (***quoting County of Douglas v. Bd. of Regents***, 210 Neb. 573, 577-78, 316 N.W.2d 62, 65 (1982)). Utilizing this rule of construction in a prior opinion, we concluded that Neb. Rev. Stat. § 9-812(2) provides for an overall category of "incentive grants" which is comprised of two classes of grants: "minigrants" and "major competitive grants." Informal Op. Att'y Gen. No. I94-020 (May 10, 1994). We also concluded:

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> [t]he second class of incentive grants, referred to as "major competitive grants," may be awarded for those "innovative programs which are directly related to the strategic school improvement plans." [*quoting* Neb. Rev. Stat. § 9-812(2)]. The statute places three conditions upon the award of a "major competitive grant":
>
> 1. a school district must have developed a strategic improvement plan before any major competitive grant may be awarded;
>
> 2. plans which contain public or private matching funds and cooperative agreements shall be given special consideration in the grant process; and
>
> 3. annual reports which document the effectiveness of the innovative program shall be filed by a grant recipient.

Id. at 5; *see also* Op. Att'y Gen. No. 94-092 (November 23, 1994) (discussing the eligibility of certain major competitive grants under Neb. Rev. Stat. § 9-812); Op. Att'y Gen. No. 95-018 (March 9, 1995) (providing historical information regarding creation of the Education Innovation Fund). Based upon our prior determination, we find that the current provisions of Neb. Rev. Stat. § 9-812 preclude the Council from creating a second <u>category</u> of "major competitive grants."

This finding, however, does not preclude the Council from reorganizing its <u>application process</u> in order to consider, apart from other major competitive grant submissions, those grant applications which propose smaller-scale innovative projects. In accordance with Neb. Rev. Stat. § 9-812(2), the Nebraska State Board of Education has promulgated regulations establishing procedures regarding the selection and administration of grants awarded from the Education Innovation Fund. *See* Title 92 Nebraska Administrative Code ["NAC"], Chapter 89 (1994). A provision of the regulations specifies that, with regard to the grant application process,

> [t]he Council may develop forms that it may require for use by applicants. The Council may develop such general guidelines for submitting applications as it deems appropriate. **The Council, at its discretion, may develop separate guidelines, forms, and instructions for grant applications involving small amounts of money, a limited number of individuals, or a short period of time, as determined by the Council.**

92 NAC 89, § 008.01 (1994) (emphasis added).

Pursuant to the regulation, the Council may restructure its "major competitive grant" application process in order to separately consider recommendations to the Governor of limited innovative project proposals. In order to be awarded, however, each such "limited" proposal must continue to meet the conditions of Neb. Rev. Stat. § 9-812 which require (1) that a strategic school improvement plan has been developed by a school district; (2) that a grant proposal is directly related to a strategic school improvement plan; (3) that any recipient be required to file an annual report documenting project effectiveness; and (4) that the Council give special consideration, within the separate application process, to grant proposals which contain public or private matching funds or entail cooperative agreements.

Sincerely,

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24-27-14.op

Approved:

Attorney General