Linda Willard

DEPARTMENT OF JUSTICE
STATE OF NEBRASKA
TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

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Attorney General
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#90005

STATE OF NEBRASKA
JAN 29 1990
DEPT. OF JUSTICE

DATE: January 26, 1990

SUBJECT: Release or assignment of lease agreement governing Strategic Air Command Museum.

REQUESTED BY: Senator D. Paul Harnett
Chairperson, Urban Affairs Committee

WRITTEN BY: Robert M. Spire, Attorney General
Fredrick F. Neid, Assistant Attorney General

This is in response to your questions concerning "releasing" the lease of the Strategic Air Command Museum property to a private foundation. Your questions are whether the Department of Economic Development has the legal authority to transfer the lease to another party and whether additional legislation would be required.

Currently, the museum property is leased to the State of Nebraska Department of Economic Development for a term of fifty years. The lessor is the United States Air Force.

Generally the control and disposition of state property is vested in officers, commissions, or boards who have the powers and duties prescribed by the constitution or by statute. The Department of Economic Development has requisite statutory authority to contract for and lease properties under its management under the provisions of Neb.Rev.Stat. § 81-1222.02 (Reissue 1987) which, in part, state:

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(2) The Director of Economic Development may contract for and lease any property under the control and supervision of the Department of Economic Development to any person or organization if such lease is in the best interest of the State. All funds collected from such leases shall be deposited in the appropriate department fund and used for the purposes set forth for that fund.

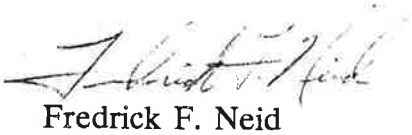
Since the Department of Economic Development is permitted by statute to contract for and lease property under its management, additional legislation is not required for this purpose.

It is important to note that while the Department possesses statutory authority to contract for or to lease property, it is precluded from releasing or assigning the museum property by express terms of the lease. Paragraph 3 of the Lease Agreement provides that " the Lessee shall not pledge, assign, transfer, lease, subcontract, or part with the possession of the lease property, either directly or indirectly." This lease provision effectively prohibits transfer of the museum property by the state to another party.

Accordingly, it is our conclusion that the State has requisite statutory authority for the release of the property but is precluded by the lease terms from conveying its interest in the property to another party.

Sincerely,

ROBERT M. SPIRE
Attorney General



Fredrick F. Neid
Assistant Attorney General

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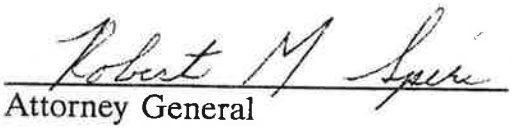

Attorney General

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