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STATE OF NEBRASKA
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DATE: February 12, 1991

SUBJECT: Interpretation of Neb.Rev.Stat. §2-3612 (Reissue 1987) as it relates to the filling of a vacated member-at-large position on the Nebraska Corn Development, Utilization & Marketing Board

REQUESTED BY: Nebraska Corn Development, Utilization & Marketing Board

WRITTEN BY: Don Stenberg, Attorney General
L. Steven Grasz, Deputy Attorney General

This Attorney General's Opinion is issued in response to the request of the Nebraska Corn Development, Utilization and Marketing Board (the "Board") for a written opinion on the interpretation of Neb.Rev.Stat. §2-3612 (Reissue 1987) as it relates to the filling of a vacated member-at-large position on the Board.

Under the Nebraska Corn Resources Act (the "Act"), Neb.Rev.Stat. §§2-3601 to 2-3635 (Reissue 1987), the Board is to be composed of nine members, as described in §2-3611. Eight of the nine members are to be appointed by the Governor from designated districts. See §§2-3613 to 2-3615. The ninth member of the Board is initially "appointed" by the other eight members of the Board. See §2-3616. "Such appointment shall be made at large and the appointee shall meet the same qualifications as the other members of the board." Id. The term of the member at large is three years. §2-3617. Vacancies on the Board are governed by section 2-3612, which states as follows:

> Whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy from the district in which the vacancy

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> exists. If the vacant position is that of the at-large member, the appointment to fill such vacancy shall be made at large.

Neb.Rev.Stat. §2-3612 (Reissue 1987).

At issue is whether a vacancy in the at large position on the Board is to be filled by the Governor or the Board.

After examination of §2-3612 in the context of the Act and in light of the legislative history of the Act,[1] it is the opinion of the Attorney General a vacancy in the at large position on the Board is to be filled by appointment by the Governor.

In construing section 2-3612, the intent of the Legislature must be determined from the entire language of the statute considered in its plain, ordinary, and popular sense. Georgetowne Ltd. Part. v. Geotechnical Services, 230 Neb. 22, 430 N.W.2d 34, 39 (1988).

The first sentence of §2-3612 states that "Whenever a vacancy occurs on the board for any reason, the Governor shall appoint an individual to fill such vacancy. . . ." This would seem to establish an unequivocal requirement of Gubernatorial appointment. However, the sentence goes on to require the appointment be "from the district in which the vacancy exists." Thus, the first sentence of §2-3612, standing alone, arguably does not to relate to vacancies in the at large position since this board member is not appointed from a district.

The second sentence of §2-3612 states "If the vacant position is that of the at-large member, the appointment to fill such vacancy shall be made at large." Since "appointment" is used in the Act to refer to appointments by the Governor as well as by the Board, see §2-3613 to 2-3617, the second sentence of §2-3612, standing alone, does not necessarily establish that a vacancy in the at large position is to be filled by the Governor.

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[1] Section 2-3612 of the Act is identical to §2-3304(2) of the Nebraska Soybean Resources Act (the "Soybean Act"), which was adopted three years prior to the Act. The possibility that statutes governing other commodity boards would be patterned after the example set in the Soybean Act was discussed during floor debate, see 1975 Neb.Laws, LB 74, Transcript of the Floor Debate, April 30, 1975, 3402; id. May 8, 1975, 4117. Unfortunately, no helpful debate regarding the provision for filling vacancies appears in the legislative history of either the Soybean Act or the Act.

When the two sentences of section 2-3612 are construed in context, however, rather than in isolation, the better view is that the second sentence (relating to appointments to fill a vacancy in the at large position) is intended to be a clarification of qualifications of the person who may be appointed by the Governor as provided in the first sentence. We feel this construction best effectuates the intent of the Legislature as determined from the entire language of the statute considered in its plain, ordinary, and popular sense. Thus, whenever a vacancy occurs in the at large position, the appointment to fill such vacancy shall be made at large by the Governor.

Although this interpretation of §2-3612 may seem to diminish, at least temporarily, the independence of the at large member, this opinion attempts to discern the state of the law, not the wisdom of the provision in question. Had the legislature intended a vacancy in the at large position be filled by the Board it could have so provided, as it did with respect to the Dry Bean Commission in §2-3749.[2]

Respectfully submitted,

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Approved By:

Attorney General

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[2] Section 2-3749 provides:

> Whenever a vacancy occurs on the commission for any reason, the Governor shall appoint a person with the same qualifications as the initial appointee unless the vacant position is that of a member at large, in which case the appointment to fill such vacancy shall be made by the commission.

Neb.Rev.Stat. §2-3749 (Reissue 1987).