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95061
NO.
STATE OF NEBRASKA
OFFICIAL
AUG 2 1995
DEPT. OF JUSTICE

DATE: August 1, 1995

SUBJECT: Accounting Procedures For County Treasurers In Light of Duties Imposed By Neb. Rev. Stat. § 23-1601 (as amended by 1995 Neb. Laws, LB 122)

REQUESTED BY: John Breslow, Auditor of Public Accounts

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

You have requested an opinion from this office as to whether legislation enacted during the Unicameral's 1995 session creates a variance in the nature of certain duties imposed upon all county treasurers under current law. Specifically, you have asked whether changes made to Neb. Rev. Stat. § 23-1601 are in conflict with existing requirements of Neb. Rev. Stat. § 79-460.

## Statutes At Issue

Neb. Rev. Stat. § 79-460 (1994) is a statute found amongst others which outline the powers and obligations imposed upon local school district officers. Section 79-460, which governs procedures for receipt and disbursement of school district funds, imposes the following specific duty upon local school district treasurers: "It shall be the duty of the treasurer of each district to apply for and receive from the county treasurer all school money apportioned to the district, or collected for the same by the county treasurer, upon order of the secretary countersigned by the president . . . ." *Id.*

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Neb. Rev. Stat. § 23-1601 is one of several statutes which govern the powers and obligations of county treasurers. In pertinent part, the statute, as amended by the Unicameral in 1995, requires that

> [o]n or before the fifteenth day of each month, the county treasurer (a) shall pay to each city or village and school district located within the county the amount of all funds collected or received for the city or village and school district the previous calendar month, . . . and (b) . . . shall include with payment a statement indicating the source of all such funds received or collected and an accounting of any expense incurred in the collection of ad valorem taxes . . . .

Neb. Rev. Stat. § 23-1601 (as amended by 1995 Neb.Laws, LB 122, § 4).

The requirements of § 23-1601, as set forth above, become effective on September 9, 1995. *See* Neb. Const. art. III, § 27 (providing that all legislative enactments not containing an emergency clause take effect three calendar months after adjournment of the Legislature).

**Standard of Review**

Our analysis of these two statutory provisions is directed by several canons of statutory construction which have been adopted by the Nebraska Supreme Court. First, in construing a statute, we, like a court, "must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense." ***State ex rel. Scherer v. Madison County Commissioners***, 247 Neb. 384, 387, 527 N.W.2d 615, 618 (1995); ***In re Guardianship & Conservatorship of Bloomquist***, 246 Neb. 711, 717, 523 N.W.2d 352, 356 (1994). Next, we "must look at the statutory objective to be accomplished, the problem to be remedied, or the purpose to be served, and then place on the statute a reasonable construction which best achieves the purpose of the statute, rather than a construction defeating the statutory purpose." ***Bloomquist***, 246 Neb. at 717, 523 N.W.2d at 356 (quoting ***Durand v. Western Surety Co.***, 245 Neb. 649, 651, 514 N.W.2d 840, 842 (1994)). Finally, the court has directed that "[s]tatutes relating to the same subject matter are in pari materia, and . . . [should be] construe[d] . . . together so as to determine the intent of the Legislature and to maintain a consistent and sensible statutory scheme." ***State ex rel. Scherer***, 247 Neb. at 387, 527 N.W.2d at 618; ***Grady v. Visiting Nurse Ass'n***, 246 Neb. 1013, 1017, 524 N.W.2d 559, 562 (1994).

**Discussion**

Construed together, the plain language of each of the statutes at issue demonstrates that separate duties are imposed upon a school district treasurer and a county treasurer. It is a school district treasurer's duty "to apply for and receive from the county treasurer all school money apportioned to the school district." Neb. Rev. Stat. § 79-460. Effective September 9, 1995, it will be a county treasurer's duty, in part, "to pay [on or before the fifteenth of each month] to each . . . school district located within the county the amount of all funds collected or received for the . . . school district [during] the previous month . . . ." Neb.Rev.Stat. § 23-1601 (as amended by 1995 Neb.Laws, LB 122, § 4).

We find the duties imposed pursuant to both statutes to be distinct and independent of one another. Thus, a county treasurer's duty to pay over all school district funds on or before the fifteenth day of each month is <u>not</u> contingent upon receipt of a school district's order requesting such funds. Likewise, enactment of LB 122 does not abrogate a school district treasurer's general duty to apply for and receive from a county treasurer all school funds which have been apportioned to that district.

The scant legislative history surrounding enactment of LB 122 bolsters our findings. The pertinent portion of floor debate that was engaged in prior to adoption of LB 122 is as follows:

> SENATOR MATZKE: [T]he Nebraska statutes presently requires a county treasurer to pay all funds collected the previous month to cities and villages. All this bill does is add three words, "and school district." It includes with cities and villages the duty of the county treasurer to pay funds collected the prior month to a school district. The second part of the law then . . . requires the county treasurer to include with the payment, a statement indicating the source of all the funds received or collected. It is a necessary bill because there are a few county treasurers who are reluctant to pay the funds that they have collected to the school districts as they already are required to do for cities and villages. I would ask that the bill be advanced.
>
> SPEAKER WITHEM: You've heard the opening, is there any discussion? ....
>
> SENATOR JONES: Mr. Chairman, members of the body, could I ask a question of Senator Matzke? Yes, is that in record, or documented that has been happening that they

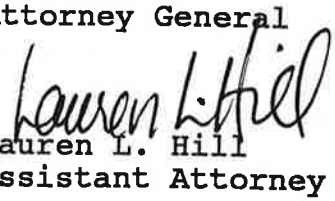
> haven't been sending to all the schools on the fines that are supposed to be done?
>
> SENATOR MATZKE: We have two counties where it has occurred, yes.

Floor Debate on LB 122, 94th Neb. Leg., 1st Sess., January 31, 1995.

This discussion, coupled with the plain language of § 23-1601, clearly illustrate that the Legislature's intent in enacting LB 122 was to impose upon county treasurers an automatic duty to pay over to school districts located within the county all funds collected or received in the previous month. As we noted above, the county treasurers' duty is absolute and, thus, not contingent upon contact from a school district.

Sincerely,

DON STENBERG
Attorney General



Lauren L. Hill
Assistant Attorney General

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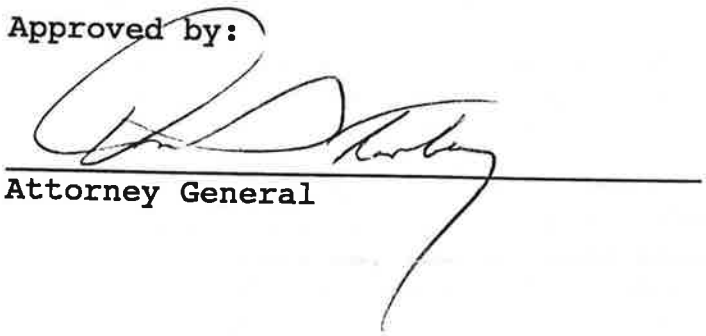

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