STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

#95087

NO.
STATE OF NEBRASKA
OFFICIAL
NOV 21 1995
DEPT. OF JUSTICE

DATE: November 15, 1995

SUBJECT: County Treasurers; Assessments for Publication of Lists of Real Property Subject to Sale for Nonpayment of Taxes

REQUESTED BY: John Breslow, Auditor of Public Accounts

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

This is in response to your request for an opinion of the Attorney General regarding statutory amounts which may be assessed by county treasurers for publication of properties subject to sale. You indicate that the question regarding county assessments is raised to the Attorney General because the Auditor of Public Accounts prescribes "the accounting procedures for counties."

The question asked relates to the new increased amount which may be assessed by county treasurers against real property for publication of lists of real property subject to sale for non-payment of taxes. The assessments by county treasurers are authorized by the provisions of Neb. Rev. Stat. § 77-1804 (Supp. 1995). Specifically, you inquire whether the new increased amount of five dollars may be assessed for lists of properties published during the month of February for the years 1995 and 1994. It is our view that the new increased amount of five dollars may be assessed after the effective date of the amendatory act authorizing the new increased amount. Accordingly, the new rate of five dollars cannot be assessed for publication of properties in February of 1994 and 1995.

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Delores N. Coe-Barbee
Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce N. Harper
Lauren Lee Hill
Jay C. Hinsley
Amy Hollenbeck
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Joseph P. Loudon
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Ronald D. Moravec
Fredrick F. Neid
Marie C. Pawol
Kenneth W. Payne
Alan E. Pedersen
Paul N. Potadle
Hobert B. Rupe
James D. Smith
James H. Spears
Mark D. Starr
Timothy J. Texel
John R. Thompson
Barry Wald
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

Printed with soy ink on recycled paper

The question arises because section 77-1804 was amended by LB 202 to increase the amount of the assessment from two dollars to five dollars for costs incurred for publishing or advertising the lists of real property subject to sale. The effective date of the amendment by LB 202 is September 9, 1995. Following amendment, section 77-1804 states:

> **Real property taxes; delinquent tax list; publication and posting of notice; publication charges.** The county treasurer shall cause the list of real property subject to sale and accompanying notice to be published once a week for three consecutive weeks prior to the date of sale, commencing the first week in February, in a legal newspaper and, in counties having more than two hundred fifty thousand inhabitants, in a daily legal newspaper of general circulation, published in the English language in the county, and designated by the county board. The county treasurer shall also cause to be posted in some conspicuous place in his or her office a copy of such notice. <u>The treasurer shall assess against each description the sum of five dollars to defray the expenses of advertising, which sum shall be added to the total amount due on such real property and be collected in the same manner as taxes are collected</u>.

(Emphasis added).

The increased assessment amount of five dollars cannot be assessed retroactively for publication of lists of properties prior to the effective date of the amendment. As we understand, lists of properties subject to sale are published or advertised during the month of February and the sale conducted on the "first Monday of March" each year in accordance with the provisions of Neb. Rev. Stat. § 77-1802 (Cum. Supp. 1994). The lists of property subject to sale are published weekly for three consecutive weeks prior to the date of sale. Accordingly, the new five dollar amount would be assessed during February of 1996, the first time the property lists are published following September 9, 1995, the effective date of the amendatory act.

A statute is not to be given a retrospective effect unless the language of the statute clearly and unequivocally expresses that intent. In Nebraska, it is well established that a statute will be held to operate prospectively unless the legislative intent that it shall operate retrospectively is clearly disclosed or necessarily implied from the language used in the statute. ***State v. Von Dorn***, 234 Neb. 93, 449 N.W.2d 530 (1989); ***Adair v. Miller***, 109 Neb. 295, 190 N.W. 865 (1922). This principle of construction also applies

to amendatory acts. An amendment to a legislative act does not act retroactively. *Retired City Civilian Emp. Club of City of Omaha v. City of Omaha Emp. Retirement System*, 199 Neb. 507, 260 N.W.2d 472 (1977). The language of section 77-1804 as amended by LB 202 does not evidence any intent or purpose that the new increased amount be retroactively assessed prior to the effective date of the amendment of the statute.

A schedule was included in your request letter to illustrate the question you present. The schedule includes two columns designated "(1)" and "(2)" and assessment amounts are included under each column for the years 1994, 1995 and 1996. A caption includes the inquiry, "Which list of advertising fees is correct." As we understand your inquiry, the list of assessment amounts set forth in column "(1)" includes the proper amounts since the new increased amount of five dollars would be assessed after the effective date of the statute. The two dollar assessment rate is reflected in column "(1)" for assessments made for publication of the lists of properties prior to the effective date of the amendatory act.

Sincerely,

DON STENBERG
Attorney General

Fredrick F. Neid
Assistant Attorney General

Approved By:

Attorney General

21-748-6.op