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NEB. STATE OF NEBRASKA
OFFICIAL
DEC 8 1999
DEPT. OF JUSTICE

DATE: December 6, 1999

SUBJECT: Necessity For An Increase In The State Treasurer's Appropriation Authority If The State Treasurer Is To Operate A New Centralized Collection And Disbursement System For Child Support Payments.

REQUESTED BY: David Heineman
Nebraska State Treasurer

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

In 1999, the Nebraska Legislature passed LB 637 which, among other things, created a State Disbursement Unit for the statewide collection and disbursement of child support order payments. 1999 Neb. Laws LB 637, § 2. The State Disbursement Unit will be administered and operated directly by a "public or private entity or state officer" as designated by the Title IV-D Division of the Department of Health and Human Services. ***Id.*** In your opinion request letter, you state that there have been discussions about your office performing the function of collecting and disbursing child support payments, and that such a new responsibility would require additional funds for staff and operational expenses beyond your current appropriation. You also state that, while it is theoretically possible for you to divert funds from the existing appropriation for your office to collect and disburse child support payments, such a diversion would make it impossible for you to perform your other constitutional and statutory duties. You then ask:

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> Given those circumstances, my question is can the State Treasurer expend funds above and beyond the State Treasurer's current appropriation for the purpose of establishing a new centralized collection and disbursement system for child support payments without an increase in the State Treasurer's appropriation authority from the Nebraska Legislature?

We believe that the answer to your question is "no."

> Art. III, § 25 of the Nebraska Constitution provides, in pertinent part:
>
> No money shall be drawn from the [state] treasury except in pursuance of a specific appropriation made by law, and on the presentation of a warrant issued as the Legislature may direct, . . .

That constitutional provision requires a specific appropriation by the Legislature for a particular purpose when state funds are expended, and it further "forbids the drawing of a single dollar from the state treasury unless authorized by an appropriation." ***Fischer v. Marsh***, 113 Neb. 153, 156, 202 N.W. 422, 423 (1925). For that reason, as we have noted in previous opinions, no monies can be withdrawn from the Nebraska State Treasury except as pursuant to a specific appropriation and upon presentation of a properly issued state warrant. Op. Att'y Gen. No. 98043 (October 26, 1998); Op. Att'y Gen. No. 95025 (March 31, 1995). Consequently, you may only spend funds from the State Treasury for establishing a new centralized collection and disbursement system for child support payments in your office if a specific appropriation exists for that purpose.

LB 880 is the main 1999 appropriations bill for the expenses of state government. 1999 Neb. Laws LB 880. Section 36 of that bill contains an appropriation to your office for "treasury management" which presumably contains the funds to cover the normal operating expenses of your office, and it appears to us that you might be able to use some portion of those funds for operation of a child support collection and disbursement system. 1999 Neb. Laws LB 880, § 36. However, you indicated in your opinion request letter that such a use of your current operating funds would make it impossible for you to perform your other constitutional and statutory duties. Apart from § 36, we can find no other portion of LB 880 which appropriates funds to your office for child support functions. Nor does LB 637A, the appropriations bill for the LB 637, contain any appropriations to your office for duties connected with child support collection or disbursement. Therefore, we do not believe that a specific appropriation exits which would allow you to create a new centralized collection and disbursement system within your office for child support payments. To allow you to perform that task, the Nebraska Legislature will need to increase your appropriation authority.

Sincerely yours,

DON STENBERG
Attorney General

Dale A. Comer
Assistant Attorney General

Approved by:

Attorney General

05-128-10.15