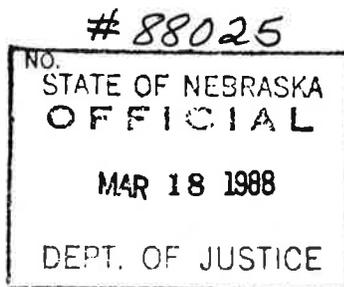


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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



ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

DATE: March 15, 1988

SUBJECT: Propriety of a Low Interest Loan to the Oakland-Craig School District Under the Provisions of Neb.Rev.Stat. §23-2415 (Reissue 1983)

REQUESTED BY: Frank Marsh
Nebraska State Treasurer

WRITTEN BY: Robert M. Spire, Attorney General
Dale A. Comer, Assistant Attorney General

You have received an application from the Oakland-Craig Public Schools for a low interest loan from state funds pursuant to Neb.Rev.Stat. §23-2415 (Reissue 1983). Subsequent to receipt of the loan application, you requested our opinion as to the propriety of a loan under the pertinent statute. We have now completed our review of the matter, and we have concluded that the situation involving the Oakland-Craig Public Schools does not fall within the provisions of §23-2415. Therefore, we believe that such a low interest loan to the school district is neither required under the statute nor proper. Our reasoning is set out below.

On November 6, 1984, Duane Dahlgren was severely injured in a collision between the pick-up truck in which he was a passenger and a school bus owned and operated by the Oakland-Craig School District. As a result of that accident, Mr. Dahlgren sued the school district for damages.

After the lawsuit was filed, the members of the Oakland-Craig School Board became concerned that they could be held personally liable for any damages awarded against the school district under the provisions of Neb.Rev.Stat. §77-1623 (Reissue 1986). That statute provides that officers of public corporations who fail to levy and collect the tax necessary to pay off a judgment against a public corporation shall become personally liable to pay such judgment. Thereafter, all members of the Oakland-Craig School Board resigned, and, by court order, a receiver was appointed to conserve and manage the assets of the school district.

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In December, 1987, the Burt County District Court approved a settlement agreement involving the parties to the Dahlgren lawsuit. So far as pertinent here, that settlement requires the Oakland-Craig School District to pay Mr. Dahlgren \$500,000.00 over the next five years. That \$500,000.00 is due in yearly installments of \$50,000.00 in 1989, \$75,000.00 in 1990, \$100,000.00 in 1991, \$125,000.00 in 1992, and \$150,000.00 in 1993. The \$500,000.00 due from the Oakland-Craig district is exclusive of other funds paid to Mr. Dahlgren from insurance proceeds. Because there was concern regarding the district's ability to pay this judgment, the receiver and the superintendent of the Oakland-Craig district applied to your office under the provisions of §23-2415 to obtain a \$500,000.00 loan payable over 20 years at the statutory interest rate of one-half of one percent. That application resulted in your inquiry.

The pertinent statute in question in this case is Neb.Rev.Stat. §23-2415 (Reissue 1983), which provides that:

Any awards or judgments pursuant to this act shall be paid in the same manner as other claims against the political subdivision. If insufficient funds are available to pay such awards or judgments the governing body shall include sufficient funds in the budget for the next fiscal year. If constitutional or statutory provisions prevent any political subdivision from budgeting sufficient funds to pay any judgment in its entirety, the governing body shall pay that portion that can be paid under the constitution and laws, and then shall make application to the State Treasurer for the loan of sufficient funds to pay the judgment in full. When application is made for such a loan, the State Treasurer shall make such investigation as he deems necessary to determine the validity of the judgment and the inability of the political subdivision to make full payment on the judgment, and the period of time during which the political subdivision will be able to repay the loan. After determining that such loan will be proper, the State Treasurer shall make the loan from funds available for investment in the state treasury, such loan to carry an interest rate of one half of one per cent per annum. The State Treasurer shall determine the schedule for repayment, and the governing body of the political subdivision shall annually budget and levy a sufficient amount to meet this schedule until the loan, with interest, has been repaid in full.

At the outset, we would note that there is at least some question as to whether the application submitted to your office is even in proper form. Section 23-2415 specifies that the "governing body" of the governmental subdivision seeking a loan

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shall make application to the State Treasurer. In this case, the Oakland-Craig application was submitted by the court-appointed receiver and by the superintendent of schools. A receiver is an officer of the court which appoints him, and he acts on behalf of all parties interested in the litigation. Louis v. Gallemore, 175 Neb. 279, 121 N.W.2d 388 (1963); City Savings Bank v. Cailon, 87 Neb. 266, 127 N.W. 161 (1910). On the other hand, the superintendent of schools is under contract with and a salaried employee of the district. See, Neb.Rev.Stat. §79-519 (Reissue 1987). It seems to us that neither of these individuals constitutes the "governing body" of the Oakland-Craig district, and neither would be authorized to apply to your office for a loan under §23-2415.

It could be argued that the "governing body" language of §23-2415 should be disregarded in this case since the school board for the district has resigned and there is no such body to make application for a loan. However, it appears to us that the lack of a proper body to make application under the terms of §23-2415 lends support to our conclusion, discussed below, that §23-2415 was not intended to apply to the situation facing the Oakland-Craig district.

Our fundamental problem with the propriety of a loan to the Oakland-Craig district under §23-2415 is based upon our conclusion that both the clear language and the legislative history of that statute indicate that it does not apply to the factual situation involving Oakland-Craig. The statutory language in question is:

If constitutional or statutory provisions prevent any political subdivision from budgeting sufficient funds to pay any judgment in its entirety, the governing body shall pay that portion that can be paid under the constitution and laws, and then shall make application to the State Treasurer for the loan of sufficient funds to pay the judgment in full.

We believe that the "constitutional or statutory provisions" referenced in §23-2415 are those portions of our state Constitution and those Nebraska statutes which place a limit on the amount of taxes that a given governmental subdivision can levy, thereby preventing that subdivision from budgeting funds sufficient to pay a judgment. See e.g., Nebraska Constitution, Article VIII, Section 5; Neb.Rev.Stat. §79-432 (Reissue 1987). When such a levy limit is in place, §25-2415 provides that the subdivision shall pay what it can on a judgment up to the amount of its levy limit, and then seek the remainder owing from the State Treasurer. For example, Neb.Rev.Stat. §79-432 (Reissue 1987) provides that a Class I school district may not levy more than 42 cents on each \$100.00 of actual value of taxable property in the district unless an additional levy is approved by the

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electors of the district. Therefore, in a situation where a Class I district facing a judgment could not levy taxes to budget sufficient funds to pay the judgment because of §79-432, that district would be eligible for a loan under §23-2415. Under that same §79-432, Oakland-Craig, which is a Class III district, can levy taxes for general school purposes "without restriction." As a result, there is no constitutional or statutory limitation on the amount of the tax levy for the Oakland-Craig district, and no constitutional or statutory provision prevents the district from raising and budgeting funds to pay the judgment. The Oakland-Craig situation, therefore, does not fall under §23-2415.

The legislative history of §23-2415 supports our view of the statute. For example, in the committee hearings on the bill that would become §23-2415, Senator Luedtke, the bill's introducer, stated,

Moreover, because of the constitutional limitations on expenditures and the like, we realize that they could have a very catastrophic loss, a negligence claim, which would result in a judgment which perhaps a local subdivision of government could not even meet. Therefore there is a provision in here which provides that the local subdivision could borrow funds from the State Treasurer at a very extreme low interest rate and pay it back out of their levy each year to pay back this loan to the State Treasurer for making up the difference that was needed in order to pay the judgment or pay the claim if the City Council, School Board, or whatever the political subdivision that needed it determined they would have to have it.

Hearings on LB 155 Before the Judiciary Committee, Nebraska Legislature, 80th Session, page 21 (February 3, 1969) (Emphasis added). In addition, the report of the legislative study committee which lead to the bill containing §23-2415 states,

Realizing that some political subdivisions have constitutional and statutory levy limits that might make it impossible to pay awards promptly, the committee is proposing a loan system. The committee feels that this proposal will be to the advantage of a deserving claimant and will protect the fiscal stability of the political subdivision.

Report of the Nebraska Legislative Council Committee on State Tort Claims Act, §15 at page XXXVII (November, 1968) (Emphasis added). To ascertain the intent of the Legislature, the Supreme Court may examine the legislative history of the act in question. School District No. 17, Douglas County v. State, 210 Neb. 762, 316 N.W.2d 767 (1982). On the basis of this legislative history, it becomes apparent that §23-2415 was intended to apply to

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situations where a levy limit prevents additional taxes and budget provisions to pay a judgment. That, of course, is not the situation involving the Oakland-Craig district.

The argument has been advanced that "constitutional and statutory provisions" do prevent the district from budgeting sufficient funds to pay the judgment. Proponents of this argument reason that the statutory provision which raises the possibility of personal liability for school board members makes it impossible to obtain a school board for the district. They reason further that various statutes require the budget of the school district to be set by the school board itself. Therefore, these statutes arguably prevent the district from obtaining a school board and from budgeting the funds to pay the Dahlgren judgment.

This argument focuses solely on that portion of §23-2415 which states, "If constitutional or statutory provisions prevent any political subdivision from budgeting sufficient funds to pay any judgment in its entirety . . ." It ignores that portion of the same sentence which continues, "the governing body shall pay that portion that can be paid under the constitution and laws, and then shall make application to the State Treasurer for the loan of sufficient funds to pay the judgment in full." The legislative intent of a particular statute should be determined from the statute taken as a whole. State v. Parmer, 210 Neb. 92, 313 N.W.2d 237 (1981). It seems to us that the entire sentence quoted above indicates that the statute applies to the situation we described earlier. That is, a governmental subdivision facing a large judgment would levy taxes up to the amount of its levy limit and seek the remainder of funds necessary from the State Treasurer. It would not apply to the Oakland-Craig situation where the district's inability to budget funds, as it exists at the present time, is not due to a levy limit imposed by the Constitution or by statute, but rather is due to the school board's mass resignation.

It has also been suggested that Legislative Resolution 263, passed by the current Legislature, supports an interpretation of the intent and scope of §23-2415 which would include the Oakland-Craig situation. It is true that legislative construction of a former statute is entitled to consideration as an aid in statutory construction. 82 C.J.S. Statutes §360. However, a legislative resolution propounding such a construction does not have the force of law and is not controlling. Id.

A close study of Legislative Resolution 263 indicates that it does not express a legislative construction of §23-2415. The actual resolution portion of LR 263 contains three main points:
1. The Legislature recognizes that the duties of the State Treasurer under §23-2415 include no legislative role, 2. The Legislature requests the State Treasurer to give appropriate

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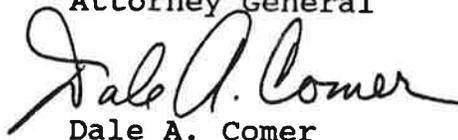
consideration to the Oakland-Craig loan under §23-2415, 3. The situation involving Oakland-Craig should not be construed as a precedent. We do not believe that this resolution constitutes a legislative construction of §23-2415 which would support a broader reading of that statute requiring a loan to the Oakland-Craig Public Schools.

In sum, we believe that the provisions of §25-2415 do not apply to the factual situation involving the Oakland-Craig district. In effect, there are no "constitutional or statutory provisions" which prevent the district from levying taxes and budgeting funds to pay the Dahlgren judgment. Absent a clear application of §23-2415, we do not believe that the district is entitled to a low interest loan at considerable cost to the State of Nebraska.

In coming to that conclusion we are not unmindful of the difficulties faced by the Oakland-Craig district and its taxpayers. However, we would note that the judgment is payable in installments over five years without interest and does not require immediate full payment. Moreover, it does not seem that the tax burden on the Oakland-Craig district as a result of the judgment will be inordinate in comparison with other school districts across the state. The current Oakland-Craig tax levy is \$2.30 for each \$100.00 of assessed valuation. Our information indicates that there are 15 school districts statewide with higher tax levies, ranging as high as \$2.84 per each \$100.00 of assessed valuation. Also, of the seven Class III school districts with higher tax levies than Oakland-Craig, five of those districts with higher levies have smaller student enrollments and smaller total valuations than Oakland-Craig, yet the highest levy in that group of five smaller school districts is \$2.84 per each \$100.00 valuation. Consequently, while the tax burden on the Oakland-Craig district may be increased, it does not appear to be totally unreasonable in comparison to other school districts in similar circumstances.

Sincerely yours,

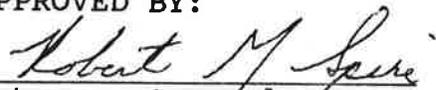
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APPROVED BY:


Attorney General