

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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NO.
STATE OF NEBRASKA
O F F I C I A L
JAN 13 1989
DEPT. OF JUSTICE

DATE: January 11, 1989

SUBJECT: Security for County Fund Deposits in Banks

REQUESTED BY: Ray A. C. Johnson, Auditor for Public Accounts

Written By: ROBERT M. SPIRE, Attorney General,
LeRoy W. Sievers, Assistant Attorney General

QUESTION: Are the requirements of Neb.Rev.Stat. §77-2326.04 (Cum. Supp. 1988) satisfied when banks located outside the State of Nebraska are used as safekeeping agents for securities pledged to County Treasurers?

CONCLUSION: No.

Neb.Rev.Stat. §77-2326.04 (2) (Cum. Supp. 1988) states in part that:

The delivery by the bank designated as a depository bank to the county judge, clerk of the county court, or clerk of the district court, as the case may be, of a written receipt or acknowledgement from a Federal Reserve Bank or branch thereof or some other bank or trust company in this state, other than the bank granting the security interest . . . constitute a valid and perfected security interest . . . (Emphasis Added).

In order to interpret the meaning of Neb.Rev.Stat. §77-2326.04 (2) the language, "in this state," must be examined in the statutory framework in which it is located. Courts have held that statutory language should be interpreted according to its plain and ordinary meaning. In Niedbalski v. Board of Education; Dist. No. 24, 418 N.W.2d 565 (1988), the court reasoned: "In the

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absence of anything indicating to the contrary, statutory language is to be given its plain and ordinary meaning." Id. at 565. The language, "in this state," modifying the phrase "or some other bank or trust company" plainly indicates that such bank or trust company must be located in this State. Therefore, in order that it be given its plain and ordinary meaning, the safekeeping bank or trust company must be located in this state.

This requirement of Neb.Rev.Stat. §77-2326.04 (2) is rationally based because it ensures that the securities pledged as collateral for the county fund deposits and/or the entities acting as the safekeeping entities are physically located in Nebraska and thereby unquestionably subject to the jurisdiction of Nebraska courts and subject to those courts interpretation of Nebraska law.

This physical location requirement thereby enhances and furthers the public policy of protecting the validity of the pledging of securities to serve as protection for public fund deposits. It is therefore appropriate that this language of the statute be interpreted to require that the bank or trust company acting as the safekeeping entity be located in Nebraska.

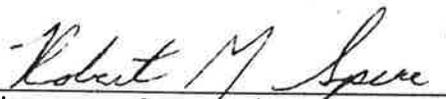
Sincerely,

ROBERT M. SPIRE,
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Approved:



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