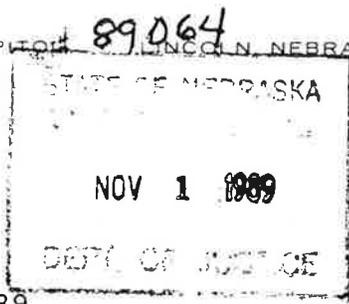


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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DATE: October 24, 1989

SUBJECT: Application of Neb.Rev.Stat. §82--319 (1% for Art) to the construction or renovation of State buildings by the Board of Regents of the University of Nebraska.

REQUESTED BY: Mr. Robert Duncan, Chairman, Nebraska Arts Council

WRITTEN BY: Robert M. Spire, Attorney General
David Edward Cygan, Assistant Attorney General

We are writing in response to your request for counsel in regard to the application of Neb.Rev.Stat. §82-319 (1% for Art) to the construction or renovation of State buildings by the Board of Regents of the University of Nebraska. Specifically:

1) Does the Legislature have the authority to promulgate Neb.Rev.Stat. §82-319 and if so, does the statute control the funds appropriated to the Board of Regents of the University of Nebraska for the construction or renovation of State Buildings?

2) If the University is bound by the 1% for Art program, do the accounting procedures set forth by Neb.Rev.Stat. §82-318 and Nebraska Arts Council regulations govern, or is the accounting procedure governed by the rules promulgated by the University of Nebraska.

The question arises from an apparent conflict between Neb.Rev.Stat. §82-319 and Neb.Rev.Stat. §85-106.01. Neb.Rev.Stat. §82-319 provides in relevant part:

All boards, agencies, commissions, or departments of state government shall, after January 1, 1979, spend at least one per cent of any appropriation for the acquisition of works of art. (emphasis supplied).

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Authority to determine the amount of money for all programs under §82-319 is vested in the Nebraska Arts Council pursuant to Neb.Rev.Stat. §82-320 in consultation with a construction project committee. The construction project committee consists in part of three members of the board, agency, commission or department for which the building is being constructed or renovated.

Compare with Neb.Rev.Stat. §85-106.01 which states in part:

After January 1, 1989, at least one per cent of any appropriation for the original appropriation of any public building under the supervision of the Board of Regents of the University of Nebraska shall be spent for the acquisition of works of art.

Accordingly, Neb.Rev.Stat. §85-106.02 provides that:

The Board of Regents of the University of Nebraska, in consultation with the Nebraska Arts Council, shall determine the amount of money to be made available for the purchases of art for each project under its supervision.

It is a well recognized rule of statutory construction that special provisions of a statute in regard to a particular subject will prevail over general provisions in the same or other statutes so far as there is conflict. Glockel v. State Farm Mutual Auto. Ins. Co., 219 Neb 222, 361 N.W.2d 559 (1985); Kibbon v. School Dist. of Omaha in Douglas County, 196 Neb 293, 242 N.W.2d 634 (1976). Since Neb.Rev.Stat. §85-106.02 provides a more specific delegation of authority for the purchase of art for the University, it is controlling. However the Board of Regents must still consult with the Nebraska Arts Council on spending. Under no circumstances may the amount spent for art be less than 1% of the appropriation as set forth by Neb.Rev.Stat. §82-318.

The next issue to be addressed is whether the Legislature has the authority to impose the 1% for art program upon the University. To resolve this issue, the first query is whether the legislature had the intent to impose the program upon the University. It becomes necessary to review the history of these two statutes to discern legislative intent. The 1% for Art program was initially enacted by the legislature in 1978 with LB 664. The preliminary language of LB 664 indicates that it is a bill relating to public buildings and not an appropriations bill. In its entirety, LB 664 also created the disputed language in Neb.Rev.Stat. §85-106.02. The legislative intention is to be determined from the general consideration of the whole act with reference to the

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subject matter to which it applies and the particular topic under which the language is found. Grosvenor v. Grosvenor, 206 Neb 395, 293 N.W.2d 96 (1980). Therefore it is appropriate in resolving this conflict to consider LB 664 in its entirety rather than focusing upon the individual statutes themselves.

In specifically addressing this issue, the bill's introducer cited examples impacting the University, such as the addition of seventy thousand seats to the University stadium:

SENATOR NEWELL: The bill does deal with the University, etc. I would think that would probably be considered, yes.

SENATOR MURPHY: It would mandate one percent of the cost of that stadium addition being art work. (Committee Records on Laws 1978, LB 664).

Quite clearly, it was the intention of the legislature to include the University under the 1% for art program. This intent is further manifested in the clear language of Neb.Rev.Stat. §82-319 which specifically mandates the inclusion of the University. The Nebraska Supreme Court has quite clearly held that the University is a state agency and is therefore bound by the statutes that apply to other state agencies. Catania v. The University of Nebraska, 204 Neb. 304, 282 N.W.2d 27 (1979), overruled on other grounds Blitzkie v. State, 228 Neb. 409, 422 N.W.2d. 773 (1988). To permit the Board of Regents to ignore any public building regulation based upon their status, such as the 1% for Art program, would then also provide the University the latitude to ignore other public building regulations such as handicapped access or the fire code. Such a result is nonsensical, and mandates that the Board of Regents be bound by public building regulation as are all other state agencies. The 1% for art program is an exercise of the State's police power as it pertains to public buildings. The 1% for art computation is not a restriction on the university's budget, but merely an attempt to quantify or qualify the recondite measure of art. This exercise of the police power is similar to the State establishing the number of fire exits or handicapped parking spaces for public buildings.

The University's reliance upon Board of Regents v. Exon, 199 Neb. 146, 256 N.W.2d 330 (1970) is inapposite in the matter at hand. The court noted in the Exon case that:

although the Legislature may add or subtract from the powers of the duties of the Regents, the general government of the University must remain vested in the Board of Regents and powers and duties that should remain

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in the Regents cannot be delegated to other officers or agencies.

However, the court further noted:

"...that the Legislature has complete control of the money which is to be appropriated from the general revenue of the state.

Therefore, when these principles are applied to the 1% for Art program, it becomes quite clear that the legislature has not invaded the general government of the University in requiring compliance with the program. Again, as before, the issue here is a public building regulation, and the Legislature is merely placing a control on the money appropriated from the general fund that is designated for the construction of public buildings.

The remaining question then is what to do with the accounting procedure for determination of the one percent of appropriations from the legislature that has been promulgated by the University. The answer is straight-forward and again relies upon the rule of statutory construction that gives more weight to the specific law in place of the general law. There is no language in Neb.Rev.Stat. §85-106.02 et seq. which establishes the accounting procedure. There is, however, a specific computation set forth in Neb.Rev.Stat. §82-318 that was enacted in the same bill as §85-106.02. Therefore, insofar as the accounting procedure does not reflect a verbatim recitation of Neb.Rev.Stat. §82-318, it is void as violative of state law.

Respectfully submitted,

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Attorney General



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Approved:


Robert M. Spire
Attorney General

cc: Patrick J. O'Donnell
Clerk of the Legislature
a:NAC