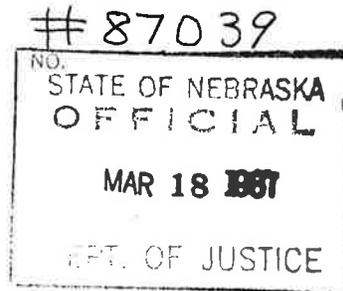


DEPARTMENT OF JUSTICE

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 18, 1987

SUBJECT: Interpretation of Neb.Rev.Stat. §85-404 (Supp. 1986); At what point in time does the 30 day time period for legislative approval of plans under §85-404 begin when an initial plan is "revised?"

REQUESTED BY: Senator Jerome Warner
Nebraska State Legislature

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

Neb.Rev.Stat. §85-404 (Supp. 1986) requires the Board of Regents of the University of Nebraska to submit plans for the construction of certain campus facilities, including financing plans, to the Legislature for its approval prior to proceeding with such construction. That statute provides that the Board of Regents may proceed with the construction of the facilities "unless the Legislature has by resolution or motion disapproved such plans within 30 days after the same have been so submitted."

On February 18, 1987, the Clerk of the Nebraska Legislature received a letter dated February 17, 1987, from the Board of Regents of the University of Nebraska which submitted certain plans for the construction of a recreational center to the Legislature for its approval pursuant to §84-404. On March 2, 1987, the Clerk of the Legislature received a "formal revision" of the earlier letter from the Board of Regents which altered certain portions of the financing proposal for construction of the recreational center. The initial portion of the second letter from the Board of Regents stated:

This letter is intended to provide a formal revision of our letter of February 17, 1987, relating to the proposed recreation/athletic facility at UNL.

L. Jay Bartel
Martel J. Bundy
Janie C. Castaneda
Elaine A. Catlin
Dale A. Comer
Laura L. Freppel

Lynne R. Fritz
Yvonne E. Gates
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson

Mel Kammerlohr
Sharon M. Lindgren
Charles E. Lowe
Lisa D. Martin-Price
Steve J. Moeller

Harold I. Mosher
Fredrick F. Neid
Bernard L. Packett
Marie C. Pawol
Jill Gradwohl Schroeder

LeRoy W. Sievers
James H. Spears
Mark D. Starr
John R. Thompson
Susan M. Ugai
Linda L. Willard

Senator Jerome Warner
March 18, 1987
Page -2-

This revision has resulted from the desire of members of the Board of Regents to have the University Administration further review this project in terms of cost, financing and construction phasing. The changes which have resulted from this review include a substantial reduction in cost which is reflected under the heading of "Financing Plans" on page two.

You now ask, when does the 30 day period for review of the second letter by the Legislature begin, and what effect does that second letter have upon the initial proposal submitted on February 18?

In considering the meaning of a statute, courts should, if possible, discover legislative intent in the language of an act and give it effect. Mitchell v. Douglas County, 213 Neb. 355, 329 N.W.2d 112 (1983). In addition, our courts will, if possible, try to avoid a statutory construction which leads to an absurd, unjust or unconscionable result. Sorenson v. Meyer, 220 Neb. 457, 370 N.W.2d 173 (1985). In construing a statute, our Supreme Court looks to the objects to be accomplished, the evils and mischiefs sought to be remedied, or purposes to be served, and places upon the statute a reasonable or liberal interpretation which will best effect its purpose rather than one which will defeat it. NC + Hybrids v. Growers Seed Association, 219 Neb. 296, 363 N.W.2d 362 (1985).

In light of the cases cited above, the portion of §85-404 which provides for a 30 day review period for the Legislature should be read in such a way as to give effect to the intent of the Legislature, to prohibit an absurd result, and to best bring about the purpose of that statute. It seems obvious to us that the purpose of the 30 day review period in §85-404 is to allow the Legislature an adequate time period to review potentially complex plans for the construction of campus facilities by the Board of Regents. Our analysis of that purpose is supported by the statement of intent for LB995, the most recent revision of §85-404 which became effective in July, 1986. LB995 was submitted to remove approval authority from the Legislature's Executive Board since that Board was handicapped in making a thorough review of proposed plans within restricted time frames. See, Introducer's Statement of Intent, LB995, 89th Legislature, Second Session, Dated February 12, 1986.

If the Legislature was concerned that there be adequate time for review of a proposal by the Board of Regents, it necessarily follows that a construction of §85-404 which would unnecessarily shorten the 30 day limit would not comport with the intent of that statute. Consequently, it seems to us that the 30 day approval period for the second letter received from the Board of

Senator Jerome Warner
March 18, 1987
Page -3-

Regents should start as of the date of receipt of that letter, or on March 2, 1987. A construction which would relate back to the approval period for the first letter and shorten the 30 day period for review of the second letter would be contrary to the obvious intent of the Legislature.

Assuming that the Legislature does have 30 days from receipt of the second "formal revision" letter from the Board of Regents to review that document, the question still remains as to what effect the second letter from the Board of Regents has upon the first letter. As indicated above, the second letter states that it is a formal revision of the initial letter which includes substantial changes from the initial proposal. The term "revision" means to correct or amend, to examine, with a view to making a change or changes. State ex rel. Taylor v. Scofield, 184 Wash. 250, 50 P.2d 896 (1935). In light of the language of the second letter from the Board of Regents together with the substantial alteration in the facility construction plans proposed by that letter, it is our view that the second letter rescinds the proposal set out in the first letter. As a result, the Legislature need not review or respond to the initial proposal from the Board of Regents dated February 17, 1987.

In summary, it appears to us that the second proposal by the Board of Regents of the University of Nebraska rescinded the initial proposal. The 30 day period for review of the second proposal by the Legislature began upon its receipt of that proposal, or March 2, 1987. In light of these conclusions, it is unnecessary for us to respond to various further opinion requests set out in your correspondence.

Sincerely yours,

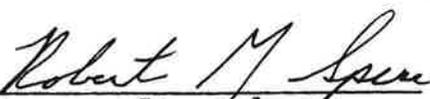
ROBERT M. SPIRE
Attorney General



Dale A. Comer
Assistant Attorney General

DAC:cdw

APPROVED:


Attorney General

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