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DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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June 3, 1985

Senator William E. Barrett
Nebraska State Legislature
1010 State Capitol
Lincoln, Nebraska 68509

Dear Senator Barrett:

This will acknowledge our receipt of your inquiry which pertains to LB 670 of the Eighty-ninth Legislature, First Session (1985).

We note that this legislative bill pertains to public lettings. If it were to become operative law, section 1 of LB 670 would amend Neb.Rev.Stat. §73-101 (Reissue 1981) by specifically inserting educational service units into a list of public bodies upon which certain duties are imposed when advertising for bids pursuant to certain statutes of the State of Nebraska. Section 2 of LB 670, if it were to become operative law, would amend Neb.Rev.Stat. §79-2201.01 (Reissue 1981) by specifically providing that educational service units shall be bound by the bidding procedures and requirements prescribed in Neb.Rev.Stat. §§73-101 to 73-106 (Reissue 1981). In connection therewith, you have asked two questions, each of which is hereafter separately discussed.

1. Under current law, is an educational service unit a "governmental subdivision," as the term appears in Neb.Rev.Stat. §73-101 (Reissue 1981), thus rendering the new language in lines 6 and 7 on page 2 of LB 670 superfluous?

The term "governmental subdivision" is not specifically defined in Neb.Rev.Stat. §§73-101 to 73-106 (Reissue 1981). Moreover, we know of no case law which specifically holds that an educational service unit is a "governmental subdivision" as that term is used in the statutes cited. On the other hand, the Nebraska Supreme Court has held that the initial formation of educational service units and their geographical boundaries was

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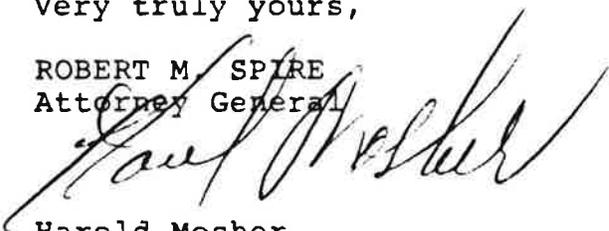
a proper exercise of legislative power and within constitutional limits. See, Frye v. Haas, 182 Neb. 73, 82, 152 N.W.2d 121 (1967). Hence, it can hardly be doubted that educational service units are subdivisions of the government of the State of Nebraska. See also, Platte Valley Public Power & Irrigation District v. County of Lincoln, 144 Neb. 584, 14 N.W.2d 202 (1944). We are therefore of the opinion that under current law, an educational service unit is a "governmental subdivision," as that term appears in Neb.Rev.Stat. §73-101 (Reissue 1981), and therefore the new language in lines 6 and 7 on page 2 of LB 670 is superfluous.

2. If Educational Service Units are included within sections 73-101 to 73-106, either under current law or by section 1 of LB 670, does the new language inserted by section 2, on page 3 lines 16 to 18, into section 79-2201.01 impose any duties and requirements on educational service units not already provided under section 79-2201.01?

It appears to us that the answer to the above stated question is dependent upon whether an educational service unit, in a particular case, is advertising for bids pursuant to any statutes of the State of Nebraska. If the answer is "yes," then it is our opinion that the new language inserted by section 2 of LB 670, page 3, lines 16 to 18, does not impose any duties and requirements on educational service units not already provided under Neb.Rev.Stat. §79-2201.01 (Reissue 1981). On the other hand, if an educational service unit is not, in a particular case, advertising for bids pursuant to any statutes of the State of Nebraska, the new language in section 2 of LB 670, page 3, lines 16 to 18, would have no application.

Very truly yours,

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Harold Mosher
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HM:ejg

cc Patrick J. O'Donnell
Clerk of the Legislature