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#97017

NO.
STATE OF NEBRASKA
OFFICIAL
MAR 10 1997
DEPT. OF JUSTICE

DATE: March 7, 1997

SUBJECT: LB 447; Whether the Term "Corporation" as Used in the Bill Includes Nonprofit Corporations

REQUESTED BY: Senator Jon Bruning
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

LB 447 would change the Nebraska statutes dealing with the provision of ambulance service by local governmental entities in several respects. In your opinion request regarding that bill, you note that the term "corporation" is used throughout the legislation, and you request a "clarification" of the meaning of that language. Specifically, you state that:

> [t]he Papillion Fire Department is a nonprofit corporation and there is concern that the term "corporation" [in LB 447] refers to it. This is not the intention of LB 447.

We, therefore, assume that you wish our opinion as to whether the term "corporation," as it is used in LB 447, includes nonprofit corporations as well as for-profit entities.

The term "corporation" is not defined in LB 447; nor is it defined in the statute which contains general definitions for use with the Nebraska statutes. *See* Neb. Rev. Stat. § 49-801 (1993). In Nebraska, in the absence of anything indicating the contrary,

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statutory language is to be given its plain and ordinary meaning. ***Application of City of Grand Island*** 247 Neb. 446, 527 N.W.2d 864 (1995). Consequently, we believe that the term "corporation" in LB 447 must be interpreted in its plain and ordinary sense.

Generally, a "corporation" is defined as "[a]n artificial person or legal entity created by or under the authority of the laws of a state or nation . . . . which is regarded in law as having an existence distinct from its several members." BLACK'S LAW DICTIONARY 307 (5th ed. 1979). Consistent with this definition, the Nebraska Supreme Court has stated that, "[a] corporation may be said to be an artificial person created by or under legislative enactment." ***Nebraska Wheat Growers Association v. Smith***, 115 Neb. 177, 190, 212 N.W. 39, 44 (1927). In Nebraska, there are generally two types of corporations which may be created by private individuals, including for-profit corporations created under the Nebraska Business Corporation Act, Neb. Rev. Stat. §§ 21-2001 through 21-20,193 (Cum. Supp. 1996), and nonprofit corporations created under the Nebraska Nonprofit Corporation Act, Neb. Rev. Stat. §§ 21-1901 through 21-19,177 (Cum. Supp. 1996).

LB 447 does not specify whether "corporation," as used in that bill, refers to for-profit or nonprofit entities. However, we believe that the term "corporation," as it is generally defined, includes both types of corporations, since both are artificial legal entities created under authority of state statute. As a result, it appears to us that the term "corporation" in LB 447 does include both for-profit and nonprofit corporations.

We would also note that the term "corporation" is used several times in LB 447 with the term "private," as in the bill's proposed addition to Neb. Rev. Stat. § 13-303 (Cum. Supp. 1996):

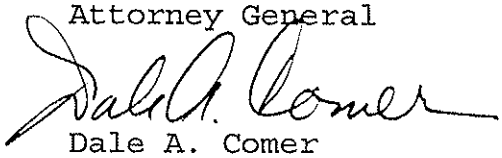
> (3) The county board or municipal governing body shall not contract with a ***private*** person, firm or ***corporation*** to provide fire service or ambulance service . . . unless the authority to so contract is approved by a majority of the registered voters of the county, city or village voting on the question at a general or special election.

(emphasis added). However, we believe that such references to "private" corporations simply distinguish between corporations which are established under statute by private individuals, and "public corporations" which are corporations established by government for the administration of governmental functions. ***See*** BLACK'S LAW DICTIONARY 307 (5th ed. 1979). Therefore, under the ordinary meaning of those terms, for-profit and nonprofit corporations are both "private corporations."

You state that it is "not the intention of LB 447" to include nonprofit corporations such as the Papillion Fire Department within its definition of "corporation." If that is the case, we suggest that you consider amending the bill to make it clear, in some way, that references to "corporation" are intended to apply only to for-profit corporations.

Sincerely yours,

DON STENBERG
Attorney General



Dale A. Comer
Assistant Attorney General

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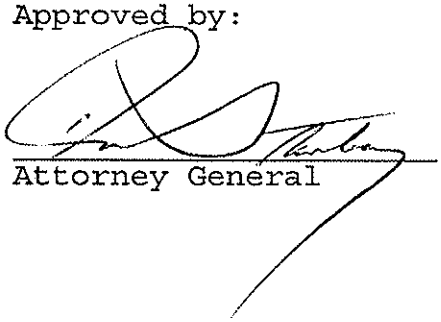
cc: Patrick O'Donnell
Clerk of the Legislature

Approved by:



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