STATE OF NEBRASKA
# Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#94009

STATE OF NEBRASKA
OFFICIAL
MAR 1 1994
DEPT. OF JUSTICE

DATE: February 18, 1994

SUBJECT: Registration Requirements Under the Nebraska Public Accountancy Act; Foreign Limited Liability Partnerships

REQUESTED BY: Annette L. Harmon, Executive Director
Board of Public Accountancy, State of Nebraska

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

This is in response to your request that the Office of the Attorney General review the question regarding registration of a foreign limited liability partnership (LLP) under Nebraska Law. Your request is due to the inquiry of an accounting firm to determine `how the Nebraska State Board of Public Accountancy would view the registration of a "foreign" (to Nebraska) LLP.'

The Public Accountancy Act, Neb. Rev. Stat. §§ 1-105.01 to 1-171 (1991 and Supp. 1993), expressly authorizes registration of partnerships and limited liability companies with the Board for practice as certified public accountants and public accountants. For this reason, it is our opinion that a foreign limited liability partnership may register with the Board if statutory requirements are complied with.

From review of materials and information you have submitted, the accounting firm is considering formation of a limited liability partnership in the State of Delaware. After formation, the partnership would seek registration as a partnership of certified public accountants in Nebraska. The State of Delaware permits formation of a limited liability partnership under its partnership

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laws. DEL. CODE ANN. tit. 6 § 1515 in part provides: ". . . a partner in a registered limited liability partnership is not liable for debts and obligations of the partnership arising from negligence, wrongful acts, or misconduct committed while the partnership is a registered limited liability partnership. . . . "

Limited liability companies may be formed and are recognized in this State. Through passage of Legislative Bill 121 in 1993, the State of Nebraska adopted the Limited Liability Company Act [codified at Neb. Rev. Stat. §§ 21-2601 to 21-2645 (Supp. 1993)]. Prior to passage of LB 121, the formation of limited liability companies was neither recognized nor authorized. Section 21-2605 of the Act authorizes formation of a limited liability company by two or more persons by formalizing and delivering articles of organization to the Secretary of State. The Act does not define the term, "company;" however, a commonly accepted meaning includes: "a number of persons united for the same purpose, either in a private partnership or a business concern." WEBSTER'S UNIVERSAL UNABRIDGED DICTIONARY 368 (2d ed. 1979). Further, a limited liability company is classified as a partnership and taxed as a corporation. *See* Neb. Rev. Stat. § 21-2633 (Supp. 1993).

<u>Foreign</u> limited liability companies are recognized in the Act and a certificate of authority may be awarded to a foreign limited liability company to conduct business in this state. Neb. Rev. Stat. § 21-2637 (Supp. 1993) states:

> The law of the state or other jurisdiction under which a foreign limited liability company is formed shall govern its formation and internal affairs and the liability of its members and managers. A foreign limited liability company shall not be denied a certificate of authority by reason of any difference between those laws and the laws of this state. A foreign limited liability company holding a valid certificate of authority in this state shall have no greater rights or privileges than a domestic limited liability company. The certificate of authority shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

Accordingly, a foreign limited liability company, upon obtaining a certificate of authority from the Secretary of State, would be authorized to conduct business in this state and treated as a domestic limited liability company under Nebraska law.

The Public Accountancy Act establishes requirements for registration of partnerships and currently authorizes registration of partnerships and limited liability companies. Neb. Rev. Stat. § 1-126 (Supp. 1993), after amendment by LB 121, states in part:

> A partnership or limited liability company engaged in this state in the practice of public accounting may register with the board as a partnership or limited liability company of certified public accountants if it meets the following requirements:
>
> (1) At least one general partner or member thereof must be a certified public accountant of this state in good standing;
>
> (2) Each partner or member thereof personally engaged within this state in the practice of public accounting as a partner or member thereof must be a certified public accountant of this state in good standing;
>
> (3) Each partner or member thereof must be a certified public accountant of some state in good standing; and
>
> (4) Each resident manager in charge of an office of the firm in this state must be a certified public accountant of this state in good standing.
>
> . . . A partnership or limited liability company which is so registered and which holds a permit issued under section 1-136 may use the words certified public accountants or the abbreviation C.P.A.'s in connection with its partnership or limited liability company name. Notification shall be given the Board, within one month, after the admission to or withdrawal of a partner from any partnership or a member from any limited liability company so registered.

(Emphasis added).

Based on these express statutory provisions, it is clear that foreign limited liability companies and partnerships may register with the Board for the practice of public accountancy if the attendant statutory requirements are complied with.

Sincerely yours,

DON STENBERG
Attorney General

Fredrick F. Neid
Assistant Attorney General

21-519-6.8

Approved by:

Attorney General