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NO.
STATE OF NEBRASKA
OFFICIAL
DEC 2 1994
DEPT. OF JUSTICE

DATE: November 23, 1994

SUBJECT: Propriety of State Credit or Procurement Cards Under Art. XIII, § 1 of the Nebraska Constitution.

REQUESTED BY: Dawn E. Rockey, Nebraska State Treasurer
Lawrence S. Primeau, Director
Department of Administrative Services

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

From your correspondence, we understand that the Office of the State Treasurer and the Department of Administrative Services have been reviewing proposals from various card companies for providing services to the State similar to the services available by credit cards. The format for the proposals is that a State agency would use the card involved (to be called a procurement card, a purchasing card, a business travel account, etc.) when making certain purchases as specified by contract. The card company which issued the card would then pay the vendor for the goods/services purchased on the card by the state agency concerned, and subsequently bill the agency for the charges. If the charges were correct, the agency would request a warrant for payment of the card company. Many of these proposals from card companies would allow State agencies to limit the types and amounts of purchases by such cards. In addition, you indicate that it is your "intention that any agency utilizing the card [would] have sufficient appropriation authority available to pay for all such [card] purchases."

In your opinion request letter, you note that art. XIII, § 1 of the Nebraska Constitution prohibits the State from contracting

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debts exceeding $100,000 in the aggregate. You then request our opinion as to whether the procurement card program described above violates any constitutional or statutory provision.

Art. XIII, § 1 of the Nebraska Constitution provides, in pertinent part:

> The state may, to meet casual deficits, or failures in the revenue, contract debts never to exceed in the aggregate one hundred thousand dollars, and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection or defending the state in war, . . .

One purpose of this constitutional limitation upon state indebtedness is to prevent the anticipation of revenue by the creation of obligations to be paid from revenue received in future fiscal periods. ***Ruge v. State of Nebraska***, 201 Neb. 391, 267 N.W.2d 748 (1978); ***State ex rel. Meyer v. Duxbury***, 183 Neb. 302, 160 N.W.2d 88 (1968). As a result, obligations which are to be paid from revenue subject to appropriation by future Legislatures are subject to the state debt limitation provision. ***State ex rel Meyer v. Steen***, 183 Neb. 297, 160 N.W.2d 164 (1968).

State constitutional debt limitations similar to art. XIII, § 1 are common. One general rule which has developed with respect to such constitutional provisions is that an obligation for which an appropriation is made at the time of its creation from funds already in existence, or for which definite provision has been made, is not within the operation of a limitation of indebtedness provision. ***State ex rel. Douglas v. Thone***, 204 Neb. 836, 286 N.W.2d 249 (1979); 92 A.L.R. 1299; 72 Am.Jur.2d ***States*** § 81.

In the present instance, you have indicated that it is your intention that agencies which use the procurement cards in question will have sufficient current appropriation authority available to pay the card charges when they are presented. So long as that is, in fact, the case, we do not believe that any charges incurred under the procurement cards at issue would violate art. XIII, § 1 on the basis of the general rule stated above. However, if there is insufficient appropriation authority available to pay the card balances at the time when they are presented, then use of the procurement cards could well involve contracting for indebtedness in violation art. XIII, § 1.

Apart from art. XIII, § 1, we are unaware of any statutory provisions which would specifically prohibit the use of the procurement or credit cards which are the subject of your opinion request. However, we would caution that any purchases of items by

use of the procurement or credit cards must presumably comply with other pertinent statutory provisions requiring competitive bidding, public lettings, etc.

Sincerely yours,

DON STENBERG
Attorney General

Dale A. Comer
Assistant Attorney General

Approved by:

DON STENBERG, Attorney General