STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#92057

STATE OF NEBRASKA
OFFICIAL
APR 6 1992
DEPT. OF JUSTICE

DATE: April 3, 1992

SUBJECT: Reporting Requirements of Municipalities Under the Nebraska Budget Act

REQUESTED BY: John Breslow, State Auditor
Office of the Auditor of Public Accounts

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

You have requested that this Office review the conclusions included in two letter opinions to former Auditor of Public Accounts, Ray A.C. Johnson, under dates of March 25, 1971 and November 24, 1987, regarding whether the Nebraska Budget Act, Neb.Rev.Stat. § 13-501 et seq. applies to the utilities department of a municipality. After review it is our conclusion that the Nebraska Budget Act is applicable to revenue sources of municipal utilities and these revenues are required to be included in the budget statement filed with the Auditor of Public Accounts.

The Nebraska Budget Act is a comprehensive legislative act applicable to political subdivisions of the state. A stated purpose of the Act is to require governing bodies of the state to follow prescribed budget practices and procedures. The contents of a budget statement are delineated in Neb.Rev.Stat. § 13-504 (Reissue 1991) which in pertinent part states:

> (1) Each governing body shall prepare in writing and file with its secretary or clerk in the year of its organization and each year thereafter, not later than the

L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Laurie Smith Camp
Elaine A. Chapman
Delores N. Coe-Barbee
Dale A. Comer
David Edward Cygan
Mark L. Ells
James A. Elworth
Laura H. Essay
Lynne R. Fritz
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Donald A. Kohtz
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Harold I. Mosher
Fredrick F. Neid
Paul N. Potadle
Marie C. Pawol
Kenneth W. Payne
Jan E. Rempe
James H. Spears
Mark D. Starr
John R. Thompson
Barry Wald
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

printed on recycled paper

first day of August each year on forms prescribed and furnished by the auditor following consultation with representatives of such governing bodies or as otherwise authorized by state law, a proposed budget statement containing the following information, except as provided by state law:

> (a) For the immediate two prior fiscal years, the revenue from all sources, other than the revenue received from taxation, allocated to each of the several funds and separately stated as to each source, and for each fund: The unencumbered cash balance of such fund at the beginning and end of the year; the amount received by taxation allocated to each fund; and the amount of actual expenditure for each fund;
>
> (b) For the current fiscal year, actual and estimated revenue from all sources, allocated to each of the several funds and separately stated as to each source, and for each fund: . . .
>
> (c) For the immediately ensuing fiscal year, an estimate of revenue from all sources, other than revenue to be received from taxation, separately stated as to each such source, to be allocated to each of the several funds, . . .

(Emphasis added).

The express and plain language of the statute means that all revenue sources, and specifically nontax sources of revenue are included in the budget statement. Further, the term "[p]ublic funds" is defined in Neb.Rev.Stat. § 13-503 (Reissue 1991) to "mean all money including nontax money, used in the operation and functions of governing bodies; . . . " We believe these express statutory provisions require that all revenue sources including revenues of municipal corporations acting in a proprietary capacity are required to be included in the budget statement of a municipality.

The related issue that has been raised is whether proprietary activities or powers of a municipal corporation are subject to the Nebraska Budget Act. It long has been held by our Supreme Court that municipal corporations are creatures of the Legislature and that the Legislature has plenary power over them. Lynch v.

Metropolitan Utilities Dist., 192 Neb. 17, 218 N.W.2d 546 (1974). The powers of a municipal corporation are divided into two general classes; the one including those which are legislative, public, and governmental and import sovereignty. The second class includes those powers and activities which are corporate, proprietary, and quasi-private conferred for the private advantage of the municipality. The providing of utility services by a municipality is viewed as the exercise of a proprietary power and function as opposed to a governmental power. The general governmental powers of a municipality are subject to the complete control of the state and no discretionary power is lodged in the municipality in regard to such powers as to whether they will be complied with. The corporate, proprietary, and quasi-private powers of a municipality are matters of purely local concern and, except in conferring power and regulating its exercise, the state has no compulsory power to impose them or to impose taxes for their support. See Obitz v. Airport Authority of the City of Red Cloud, 181 Neb. 410, 149 N.W.2d 105 (1967).

In applying these principles, it is evident that the state is not compelling a municipality to provide utilities services nor impose taxes for these purposes. The inclusion of revenues from municipal proprietary functions constitute regulation of the exercise of the proprietary function. In construing a statute applicable to the use of funds derived from proprietary functions, the Nebraska Supreme Court noted the Legislature's role and commented:

> While the revenues received by the district in the operations of its business are not public funds in the same sense as those derived from taxation, however, they are public funds collected by the district for certain purposes and the Legislature may, under control of this district, authorize their expenditure for a public purposes beneficial to such district and those immediately interested therein but under the restrictions and limitations imposed on the Legislature by the Constitution.

United Community Services v. the Omaha Nat. Bank, 162 Neb. 786, 797, 77 N.W.2d 576, 585 (1956).

It is clear that it is within the purview of the Legislature to prescribe budgetary requirements which include nontax revenues of political subdivisions. Consequently, we believe that revenues of municipal corporations derived from proprietary activities, including utility services, are required to be included in budget statements by virtue of express provisions of the Nebraska Budget Act.

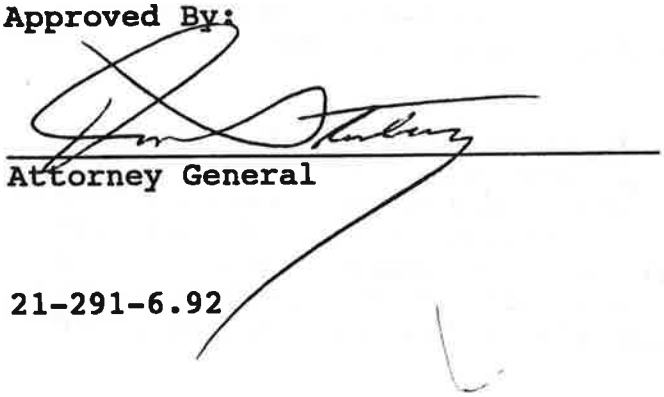
To the extent the letter opinion of March 25, 1971, is construed to conclude otherwise, it is countermanded and superseded by this opinion.

Sincerely yours,

DON STENBERG
Attorney General

Fredrick F. Neid
Assistant Attorney General

Approved By:



Attorney General

21-291-6.92