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STATE OF NEBRASKA
OFFICIAL
JUL 28 1992
DEPT. OF JUSTICE

DATE: July 27, 1992

SUBJECT: The Authority of Commodity Boards to Expend Funds for the Construction of a Research Center

REQUESTED BY: Lawrence Primeau, Director
Department of Administrative Services

WRITTEN BY: Don Stenberg, Attorney General
Steve Grasz, Deputy Attorney General

You have requested an Attorney General's Opinion on two issues related to the request by three commodity boards that warrants be drawn payable to the University of Nebraska Foundation (the "Foundation") on behalf of the George W. Beadle Center for Genetics and Biomaterials Research (the "Beadle Center").

STATE FUNDS CAP

Your first question is whether the requested warrants are prohibited by Section 8 of LB760 of the 92nd Legislature which places a cap on state funds committed to certain projects associated with the Beadle Center. LB760, §8 provides:

> Sec. 8. Program 955. The Board of Regents of the University of Nebraska is hereby authorized to construct a Greenhouse and Plant Research Facility, a utility extension, and additional chilling capacity associated with the proposed George W. Beadle Center for Genetics and Biomaterials Research. The total cost of such projects shall not exceed $6,500,000 from state funds.

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The contracts between the Foundation and the Nebraska Wheat Board ("Wheat Board"), Nebraska Corn Development, Utilization and Marketing Board ("Corn Board") and the Nebraska Grain Sorghum Development, Utilization and Marketing Board ("Sorghum Board"), which accompanied your opinion request, indicate the funds in question would be allocated to construction of the Beadle Center, in general, and would not necessarily be used for the associated projects set forth in LB760, §8. Therefore, it is arguable the requested warrants are not contrary to the provisions of LB760. However, we need not reach this issue because of our analysis of the statutory authority of the commodity boards set forth below.

STATUTORY AUTHORITY OF THE COMMODITY BOARDS

Your second question is whether the commodity boards have the statutory authority to expend funds in the manner requested. The documentation accompanying your opinion request, including memoranda, correspondence and contracts, indicates the funds in question are intended to be used for "bricks and mortar," that is, construction costs associated with building the Beadle Center.

Under Nebraska law, administrative bodies have only that authority specifically conferred upon them by statute or by a construction necessary to achieve the purpose of the relevant act. In re Application A016642, 236 Neb. 671,705,463 N.W. 2d 591 (1990); City of Auburn v. Eastern Nebraska Public Power District, 179 Neb. 439, 138 N.W. 2d 629 (1965). Pursuant to Neb.Rev.Stat. §2-3622(1) (Reissue 1991), the Corn Board is authorized to "develop and direct any corn development, utilization, and marketing program. Such program may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities". The Sorghum Board has identical statutory authority pursuant to Neb.Rev.Stat. §2-4011(1). Similarly, the Wheat Board is authorized to conduct "any other program for the development, utilization, and marketing of wheat grown in the state of Nebraska. Such programs may include a program to make grants and enter into contracts for research, accumulation of data, and construction of ethanol production facilities." Neb.Rev.Stat. §2-2309(5).

Clearly, the three commodity boards in question have statutory authority to make grants or enter into contracts with the University of Nebraska for research to be conducted at the Beadle Center. In fact, the Corn and Sorghum Boards are statutorily limited, in the area of research, to cooperation and contracts with the University of Nebraska and other appropriate organizations. Neb.Rev.Stat. §2-3634; 2-4019. However, as previously stated, the funds in question are not intended for research, but rather for construction costs. Furthermore, the commodity boards are specifically authorized to expend funds for only one type of

construction -- ethanol facilities. The maximum "expressio unius est exclusio alterius," operating as an aid in determining legislative intent respecting statutory grants of power, means that a statute enumerating things on which it operates or forbidding certain things must be construed as excluding from its effect all things not expressly mentioned, unless contrary legislative intent is plainly indicated.

We conclude the requests for warrants by the Wheat Board, Sorghum Board and Corn Board were properly denied, since the expenditure of funds for construction of a research center is outside the statutory authority of the three boards as provided by the Nebraska Legislature.

Sincerely,

Steve Grasz

Steve Grasz
Deputy Attorney General

Approved by:

Don Stenberg, Attorney General