STATE OF NEBRASKA

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NO.
STATE OF NEBRASKA
OFFICIAL
AUG 28 1996
DEPT. OF JUSTICE

DATE: August 23, 1996

SUBJECT: Application of the Budget Limit Provisions of LB 299 to Newly Established Political Subdivisions

REQUESTED BY: John Breslow, Auditor of Public Accounts

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

LB 299 was passed during the Second Session of the Ninety-Fourth Legislature and approved by the Governor on April 16, 1996, with the emergency clause. Among other things, LB 299 establishes budget limits for restricted funds for fiscal years after July 1, 1996, for governmental units. The term, governmental unit, is defined in the act to mean, "every political subdivision which has authority to levy a property tax except sanitary and improvement districts . . . ." LB 299, § 1(3).

You relate certain facts that a village in this state has recently created a community redevelopment authority and you ask whether this constitutes a transfer of financial responsibility for the village. Of course, this question is fact specific and we may only provide a generalized answer to your inquiry for this reason. Establishment of a new governmental unit in and of itself would not constitute a transfer of financial responsibility for the village. For purposes of LB 299, a transfer of financial responsibility would take place if a service or program of the transferring government unit, the village, was previously financed by restricted funds in the village's budget.

Section 2 of LB 299 in material part provides:

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> . . . If a governmental unit transfers the financial responsibility of providing a service financed in whole or in part with restricted funds to another governmental unit or the state, the amount of restricted funds associated with providing the service shall be subtracted from the last prior year's total of budgeted restricted funds for the previous provider and may be added to the last prior year's total of restricted funds for the new provider.

For purpose of the act, restricted funds is defined in Section 1 of LB 299 as follows:

> (5) Restricted funds means (a) property tax, excluding any amounts required to pay interest and principal on bonded indebtedness and any amounts refunded to taxpayers, (b) payments in lieu of property taxes, (c) local option sales taxes, (d) state aid, and (e) transfers of surpluses from any user fee, permit fee, or regulatory fee if the fee surplus is transferred to fund a service or function not directly related to the fee and the costs of the activity funded from the fee. . . .

We believe a transfer of financial responsibility occurs when a service or program financed by restricted funds is transferred from one governmental unit to another political subdivision. As you observe, the amount of restricted funds of the previous provider would be reduced from the last year's total of budgeted restricted funds if a transfer of financial responsibility took place.

This Office previously issued an opinion that concluded newly established political subdivisions are not required to obtain voter approval to levy a tax authorized by law. Op. Att'y Gen. No. 92108 (Aug. 27, 1992). In light of passage of LB 299, you further inquire whether political subdivisions are "limited in their first year of existence?" Based on the express provisions of section 4 of LB 299, we reach the similar conclusion that a newly established political subdivision may increase its restricted funds by the full amount allowed by law in a particular year.

Section 4 of LB 299 states:

> <u>A governmental unit may choose not to increase its restricted funds by the full amount allowed by law in a particular year</u>. In such cases, the governmental unit may carry forward to future budget years the amount of unused restricted funds authority. The governmental unit

> shall calculate its unused restricted funds authority and submit an accounting of such amount with the budget documents for that year. Such unused restricted funds authority may then be used in later years for increases in the total of restricted funds allowed by law. Any unused budget authority existing on the effective date of this act by reason of any prior law may be used for increases in restricted funds authority.

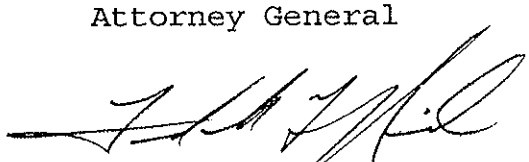
(Emphasis added).

The express provisions of section 4 allow the political subdivision the discretion to determine whether restricted fund amounts will be increased to the full amount permitted by law. Use of the word "may" in statutes is generally construed to mean that discretionary action was intended by the legislature. Neb. Rev. Stat. § 49-802 (1993) sets forth the general rules of construction for statutes and in material part provides, "[W]hen the word may appears, permissive or discretionary action is presumed."

Application of this tenet of statutory construction to the language in question makes apparent that it is within the discretion of the political subdivision whether to increase its total of restricted funds by the full amount allowed by law.

Sincerely yours,

DON STENBERG
Attorney General



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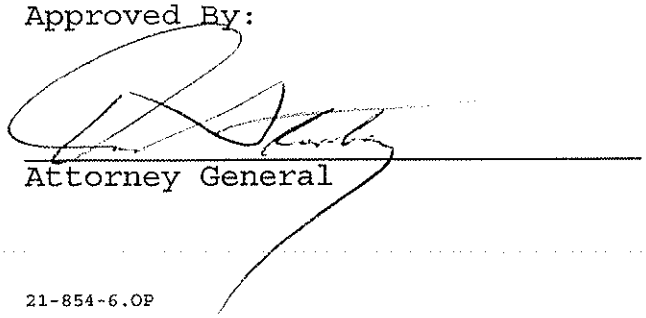

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