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STATE OF NEBRASKA
OFFICIAL
JUN 12 1991
DEPT. OF JUSTICE

DATE: June 5, 1991

SUBJECT: Authority to Use Appropriated Funds as Grants to Groups for Certain Purposes

REQUESTED BY: Jake Gonzales, Jr., Executive Director, Mexican American Commission

WRITTEN BY: Don Stenberg, Attorney General
Marilyn B. Hutchinson, Assistant Attorney General

You have asked whether the commission has authority to give some of its funds to the Hispanic Advisory Committee of Western Nebraska Community College in Scottsbluff for two programs of that committee: (1) A $250.00 scholarship for an Hispanic student and (2) $750.00 to pay 15 to 17 high school students to tutor students at Roosevelt School. You have also asked whether the commission has authority to use some of its funds to become a major sponsor of Lincoln Supersonics Track Club whose budget includes entry fees and membership fees, uniforms and travel. The request letter for your sponsorship states that minority children are actively recruited and encouraged to participate and that the program brings together children of different social and economic backgrounds. We have concluded the commission does not have such authority as discussed below.

1. <u>The powers not granted to the commission by statute are withheld.</u>

In <u>City of Auburn v. Eastern Nebraska Public Power District</u>, 179 Neb. 439, 446, 138 N.W.2d 629 (1965) the court held:

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Barry Waid
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

> An administrative board has no power or authority other than that specifically conferred upon it by statute or by construction necessary to accomplish the purpose of the act.

In State ex rel. Woolridge v. Morehead, 100 Neb. 864, 872, 161 N.W. 569 (1917) the court held: "The powers of the board not granted by the statute are withheld." In that case, the court was considering whether the state banking board had authority to limit the number of banks in any given locality. It held:

> When the legislature concludes, if it does, that it will confer the power to limit the number of banks upon the banking board, it may then have the right to do so, but at present there is no act which seems to confer this power.

(Emphasis added.) Supra, at 871.

> To say that there is some sort of hidden intent in the language used, which does not appear there, would be, upon our part, an invasion of the power which is conferred upon the legislature.

Id., at 868.

Thus, the authority of the commission to make grants to such private entities must be either specifically conferred on the commission by statute or by a construction necessary to accomplish the purpose of your act.

2. The courts have upheld grants to individuals and private entities authorized by the Legislature if the Legislature has determined they are for a public purpose.

In State ex rel Douglas v. Nebraska Mortgage Finance Fund, 204 Neb. 445, 283 N.W.2d 12 (1979), the court upheld grants made to individuals by the Legislature in order to accomplish the public purpose of financing housing for low and moderate income residents of the state. After that we concluded in Attorney General Opinion #64 (March 30, 1983) that a legislative bill was not invalid as special legislation because it authorized the Nebraska Wheat Development, Utilization and Marketing Board to make grants from its fund to individuals, firms, companies, and other persons for the encouragement and construction of alcohol plants. We reached that conclusion because the Legislature itself had determined the encouragement and construction of such plants was a proper purpose.

That determination validated the incidental benefit to individuals and companies.

In State ex rel. Creighton University v. Smith, 217 Neb. 682, 353 N.W.2d 267 (1984), the court upheld contracts with a private university for cancer research. It did so despite the constitutional prohibition against appropriation of state funds to private schools because it found such research was for a public purpose and the benefit to the private university would be incidental.

Thus, the courts have upheld grants to individuals and private entities if the Legislature has determined they are for a public purpose and authorized such grants.

3. The Legislature has not specifically authorized grants to individuals or groups by the commission as a way of helping fulfill the functions of the commission.

The commission was created by the Legislature in 1972. Neb.Rev.Stat. § 81-8,262 (Reissue 1987). It was given "all powers necessary to carry out the functions and duties specified in §§ 81-8,262 to 81-8,271." Neb.Rev.Stat. § 81-8,271. It is given express authority to receive grants but not express authority to give them. Neb.Rev.Stat. § 81-8,271. It is authorized to employ a director to serve the commission in carrying out its functions. Neb.Rev.Stat. § 81-8,269. That director may employ any subordinate personnel necessary in performance of his or her duties. Neb.Rev.Stat. § 81-8,270. The commission may contract with public and private groups to conduct its business. Neb.Rev.Stat. § 81-8,271. Thus, it may agree to pay a public or private group to do what it has authority to do itself. But it cannot contract with them to do something it cannot do itself. Even the Legislature cannot do indirectly what it cannot do directly. NPPD v. Hershey School District, 207 Neb. 412, 299 N.W.2d 514 (1980).

You cite two functions of the commission as your authority to make the grants described above. They are to:

(1) Gather and disseminate information and conduct hearings, conferences, and special studies on problems and programs concerning Mexican-Americans;

(2) Serve the needs of Mexican-Americans, especially in the fields of education . . . and recreation by offering such services as it may establish for the translation of documents and for the direct assistance of clients, exclusive of legal representation, in matters relating to any federal

> department or agency or any department or agency of the state or a political subdivision thereof.

Neb.Rev.Stat. § 81-8,265 (1) and (2).

The conferences you are authorized to conduct are those relating to problems and programs concerning Mexican-Americans. The services you may provide for clients are translation of documents and direct assistance in matters relating to any federal department or agency or any department or agency of the state or a political subdivision thereof, i.e., advocacy short of legal representation.

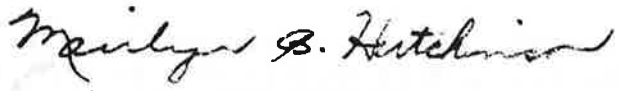
Thus, support for your authority to make the requested grants is missing. First, the Legislature has not determined that financially supporting athletic clubs, tutoring programs or advanced education for Hispanics is a function of the commission. It has not specifically authorized you to make grants to individuals or groups for such purposes.

CONCLUSION

The Legislature has not expressly authorized the commission to use any of its funds to make grants to enable a group to support a tutoring program or to give a scholarship to an individual Hispanic student or to become a major sponsor of a track club which recruits minority students. None of these are functions which the commission is authorized to do itself and so it has no authority to use its funds in that way or to contract to have someone else do so.

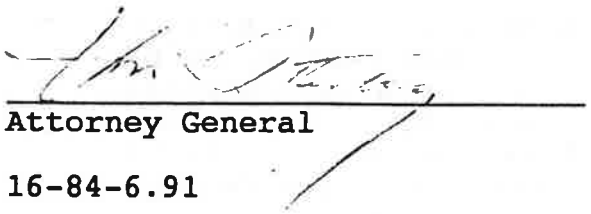
Sincerely,

DON STENBERG
Attorney General



Marilyn B. Hutchinson
Assistant Attorney General

Approved by:



Attorney General

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