STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

95056

STATE OF NEBRASKA
OFFICIAL
JUL 12 1995
DEPT. OF JUSTICE

DATE: July 11, 1995

SUBJECT: Community Redevelopment Authorities; Application of Budget Limitation Provisions and the Nebraska Budget Act

REQUESTED BY: John Breslow, Auditor of Public Accounts

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

This is our reply to the questions you have raised regarding application of the Nebraska Budget Act and budget limitation provisions to a "community redevelopment authority," as that term is defined and used in the Community Redevelopment Law, Neb. Rev. Stat. §§ 18-2101 to 18-2144 (1991 and Cum. Supp. 1994). Your office is in the process of preparing and distributing budget forms to government and public entities and your questions are raised to facilitate this process.

COMMUNITY REDEVELOPMENT AUTHORITIES

The first question you ask is whether a community redevelopment authority is "considered a governing body, separate and distinct from the City which created it, for budget purposes?" You indicate that you believe that if they are a separate governing body, "the Budget Act and lids clearly apply." Under the Community Redevelopment Law, it is clear that a community redevelopment authority is not a "governing body" as that term is meant in the

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Delores N. Coe-Barbee
Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce N. Harper
Lauren Lee Hill
Jay C. Hinsley
Amy Hollenbeck
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Joseph P. Loudon
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Ronald D. Moravec
Fredrick F. Neid
Marie C. Pawol
Kenneth W. Payne
Alan E. Pedersen
Paul N. Potadle
Hobert B. Rupe
James D. Smith
James H. Spears
Mark D. Starr
Timothy J. Texel
John R. Thompson
Barry Wald
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

Printed with soy ink on recycled paper

Nebraska Budget Act.[1] The governing body of a community redevelopment authority is the city council or village board of trustees and the authorities are political subdivisions subject to the requirements of the Nebraska Budget Act ("the Act"). Cities of all classes and villages are authorized by the Community Development Law to establish community redevelopment authorities by ordinance. Neb. Rev. Stat. § 18-2102.01 (1991) in relevant part states:

> Cities of all classes and villages of this state are hereby granted power and authority to create community redevelopment authorities and limited community redevelopment authorities.
>
> . . .(2) When it is determined by the governing body of any such city, by ordinance in the exercise of its discretion, that it is expedient to create a community redevelopment authority or limited community redevelopment authority, the mayor of such city or if the mayor shall fail to act within ninety days after the passage of the ordinance, then the president or other presiding officer other than the mayor of the governing body, with the approval of the governing body of such city, shall appoint five persons who shall constitute the authority or the limited authority. . . .

The terms, "authority," "governing body", and "public body" are defined by statute for purposes of the Community Development Law. Neb. Rev. Stat. § 18-2103 (Cum. Supp. 1994) in part states:

> For purposes of the Community Development Law, unless the context otherwise requires:
>
> (1) An authority shall mean any community redevelopment authority created pursuant to section 18-2102.01 and a city or village which has created a community redevelopment agency pursuant to the provisions of section 18-2101.01 and shall not mean a limited community redevelopment authority; . . .

---

[1]Neb. Rev. Stat. § 13-501 (Cum. Supp. 1994) provides: Act, how cited. Sections 2-958, 3-504, 12-914, 13-501 to 13-513, 13-515, 16-702, 16-706, 16-1718, 17-702, 17-703, 17-708, 17-711, 17-715, 17-718, 18-1006, 19-302, 23-132, 23-904, 23-920, 23-3519, 23-3552, 31-513, 35-509, 39-1621, 39-1634, 46-543, 46-544, 51-316, 71-1611, 79-435, 79-1007.02, and 79-2210 shall be known and may be cited as the Nebraska Budget Act.

> (4) Public body shall mean the state or any municipality, county, township, board, commission, authority, district, or other political subdivision or public body of the state;
>
> (5) Governing body or local governing body shall mean the city council, board of trustees, or other legislative body charged with governing the municipality;
>
> . . .

(Emphasis added).

Community redevelopment authorities are governmental bodies with power and authority to levy property taxes. Neb. Rev. Stat. § 18-2107 (Cum. Supp. 1994) in part states, "[a]n authority shall constitute a public body corporate and politic, . . ." and is authorized to levy a property tax ". . . not to exceed two and six tenths cents on each one hundred dollars upon the taxable value of the taxable property in such city . . . ." Based on these express statutory provisions we conclude that the authorities are political subdivisions and that a city council or village board of trustees is the governing body of an authority. We have previously concluded that governmental and political subdivisions of this state are subject to the requirements of the Act unless specifically exempted by statute to give proper effect to the objects and purposes of the Act. *See* Letter Op. Att'y Gen. No. I92-087 (December 29, 1992). Accordingly, we believe the authorities are subject to the requirements of the Act since the authorities are political subdivisions and are not statutorily excluded from application of the Act.

It appears your questions are due in part to a separate issue, whether a particular authority, the Hastings Community Redevelopment Authority, is required to prepare and file a separate budget statement. From review of other materials submitted, we understand that the budget information relating to the authority is included in the budget statement of the City of Hastings. We believe this procedure is acceptable and complies with the provisions of the Act. The Hastings City Council serves as governing body for both the authority and the City of Hastings. Thus, the city council is the public body responsible for approving budget expenditures, conducting budget hearings, and establishing the tax levy amount for both the city and authority. The city council is required by section 18-2107(11) to certify the amount of tax to be levied and shall levy and collect the taxes so certified at the same time and in the same manner as other taxes are levied and collected. We are not aware of any reason why the governing body, the city council, cannot provide notice and conduct one hearing to facilitate the budget process for both the city and the

authority. Further, an authority is statutorily authorized to operate as an agency of the city as established by ordinance. ***See*** Neb. Rev. Stat. § 18-2101.01 (1991).

The purposes of the Nebraska Budget Act are set forth in Neb. Rev. Stat. § 13-502 (Cum. Supp. 1994) which in part provides:

> **Purpose of Act.** (1) The purpose of the Nebraska Budget Act is to require governing bodies of this state to which the act applies to follow prescribed budget practices and procedures and make available to the public pertinent information pertaining to the financial requirements and expectations of such governing bodies so that intelligent and informed support, opposition, criticism, suggestions, or observations can be made by those affected. . . .

We believe that an authority may prepare a separate budget statement <u>or</u> have its budget information included in the budget of the City. Either is acceptable as long as the notice, certification of tax levy, and budget hearing requirements of the Act are complied with. We can understand that the governing body, the city council, may wish to avoid duplicative notices, hearings, and preparation of budget statements in the interests of time and economy. Accordingly, it is our view that the purposes and objectives of the Act are met if the fiscal matters of the authority are included in the budget of the city and prescribed procedures including notice and hearing are complied with.

BUDGET INCREASE LIMITATIONS

The <u>second</u> part of your inquiry concerns application of budget limit provisions to community redevelopment authorities. We believe that the statutory limits on budget increases are applicable to the authorities.

The budget limitations from property tax receipts are set forth in Neb. Rev. Stat. § 77-3401 to 77-3441 (Cum. Supp. 1994).[2] Section 77-3437(6) as currently amended defines governing body to have the meaning found in Neb. Rev. Stat. § 13-503 (Cum Supp. 1994), the definitional section of the Nebraska Budget Act. We previously have concluded the authorities are subject to the requirements of the Act. For the same reason, the authorities are

---

[2]Section 77-3437 and 77-3439 were recently amended by LB 613 passed by the 94th Legislature, First Session, with the emergency clause and approved by the governor on June 13, 1995.

subject to the budget limit provisions because the authorities are political subdivisions subject to the requirements of the Nebraska Budget Act.

SUMMARY

The requirements for adoption of budgets set forth in the Nebraska Budget Act are applicable to community redevelopment authorities since the authorities are political subdivisions not specifically excluded from the Act. The requirements of the Act are complied with if the budget information of the authorities are included in the budgets of the cities and other budget practices prescribed by the Act are met. Namely, appropriate notice to the public, conduct of the budget hearings, and certification of tax levy amounts by the governing body, the city council. It is further our opinion that the statutory budget limitation provisions relating to property tax receipts are applicable to the authorities.

Sincerely yours,

DON STENBERG
Attorney General

Fredrick F. Neid
Assistant Attorney General

Approved By:

Attorney General

21-700-6.op