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

95064
NO.
STATE OF NEBRASKA
OFFICIAL
AUG 14 1995
DEPT. OF JUSTICE

DATE: August 11, 1995

SUBJECT: Application of the budget limitations set out in *Neb. Rev. Stat.* §§ 77-3437 to 77-3441 (Cum. Supp. 1994) and LB 613, 1995 Neb. Laws LB 613, to tax levies for ambulance service under *Neb. Rev. Stat.* § 35-514.02 (1993).

REQUESTED BY: John Breslow
Nebraska Auditor of Public Accounts

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

Neb. Rev. Stat. §§ 35-501 through 35-536 (1993) deal generally with the formation, authority and duties of Rural and Suburban Fire Protection Districts in Nebraska. Section 35-514.02 (1993) provides, as is pertinent to your opinion request:

> A rural or suburban fire protection district may provide ambulance service or fire protection service whether within or without the district, may enter into agreements under the Interlocal Cooperation Act for the purpose of providing necessary ambulance service or fire protection service, may contract with any city, person, firm, corporation, or other fire protection district to provide such services, may expend funds of the district, and may charge a reasonable fee to the user. . . . The authority granted in this section shall be cumulative and supplementary to any existing powers heretofore granted. Any fire protection district providing any service under this section may pay the cost for the service out of available funds or may levy a tax for the purpose of

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

> providing necessary ambulance service or fire protection service, ***which levy shall be in addition to any other tax for such fire protection district and shall be in addition to restrictions on the levy of taxes provided by statute.***

(emphasis added). Apart from this provision dealing with the authority of Rural or Suburban Fire Protection Districts to levy taxes in certain circumstances, the provisions of ***Neb. Rev. Stat. §§*** 77-3437 through 77-3441 (Cum. Supp. 1994), as amended by LB 613 in 1995, create budget lids for various governmental subdivisions, and limit the ability of certain governing bodies including those of Rural and Suburban Fire Protection Districts to adopt budget statements in which the anticipated aggregate receipts from property taxes for any fiscal year exceed certain set amounts. The interaction of those statutes is involved in your opinion request to this office in which you ask:

> If a fire protection district enters into a contract or an interlocal agreement to provide fire protection service, or ambulance service, is the property tax levied for these services excluded from the lid limitation on anticipated aggregate (budgeted) property tax receipts as provided in State Statute 77-3437 through 77-3441 and as amended by LB 613?

From discussions with your staff, we understand that the fact situation which precipitated your opinion request involves an instance where a fire protection district is under contract to provide ambulance service to another local governmental entity. Nevertheless, the fire protection district proposes to levy a property tax under its taxing authority to provide such service. Taking those facts into account, we believe that the answer to question which you posed in your opinion request is "no." The property tax levied by the fire protection district under those circumstances is included in its lid limitation on anticipated aggregate (budgeted) property tax receipts.

We have issued a number of opinions which deal with the relationship between statutory provisions which grant authority to governmental subdivisions or other statutorily created entities to levy taxes up to a specified mill amount or which provide, as here, that the levying or taxing authority of a governmental subdivision is in addition to other restrictions on the levy of taxes provided by statute, and the statutory provisions which deal with lid limitations on local governmental entities. Op. Att'y Gen. No. 92105 (August 25, 1992); 1979-80 Rep. Att'y Gen. 490 (Opinion No. 335, dated November 12, 1980); 1979-80 Rep. Att'y Gen. 467 (Opinion No. 323, dated October 8, 1980); 1979-80 Rep. Att'y Gen. 327 (Opinion No. 227, dated February 20, 1980); 1979-80 Rep. Att'y Gen.

236 (Opinion No. 167, dated October 31, 1979). Two of those opinions are particularly helpful in this instance.

In our Op. Att'y Gen. No. 92105 (August 25, 1992), we considered, in part, whether the tax levying authority of counties, cities and villages to provide ambulance service under ***Neb. Rev. Stat. §*** 13-303 (1991) was subject to budget lid limitations. The pertinent portion of Section 13-303 provided that:

> Any county board of counties and the governing bodies of cities and villages may pay their cost for such [ambulance] service out of available general funds, or may levy a tax for the purpose of providing necessary ambulance service, ***which levy shall be in addition to all other taxes and shall be in addition to restrictions on the levy of taxes provided by statute***; . . .

(emphasis added). We concluded that, " . . . to the extent that funding for [ambulance] purposes is provided by property taxes . . . and such amounts are part of the budget statement adopted by the county, such amounts . . . are subject to the budget limitation provisions of §§ 77-3437 to 77-3441." Op. Att'y Gen. No. 92105 at 5. In reaching that conclusion, we presented the following analysis which we believe applies equally to the question which you have presented:

> . . . this office has previously adopted the view that, in situations where statutes authorized political subdivisions to levy taxes "in addition to other taxes" or "in addition to restrictions on the levy of taxes provided by statute," . . . such provisions do not override or exempt such levies from the operation of a limitation on political subdivision budgets. The limits of both the former Political Subdivision Budget Limit Act, as well as the current lid imposed pursuant to §§ 77-3437 to 77-3441, apply to budgets, not tax levies. While statutory provisions such as §§ 13-303 and 44-4317 indeed authorize the levy of taxes for the purposes specified . . . which are "in addition to restrictions on the levy of taxes provided by statute" (§13-303), this does not constitute an exception to the <u>budget</u> limitations imposed under §§ 77-3437 to 77-3441, as such limit relates to the amount which may be spent based on revenues raised by property taxation, i.e. no budget statement may be adopted in which anticipated aggregate receipts from property taxes for a fiscal year exceed anticipated aggregate receipts for the prior year, unless an increase is approved by the governing body under § 77-3438, or by the voters of the political subdivision under § 77-3439. Removal of statutory restrictions relating

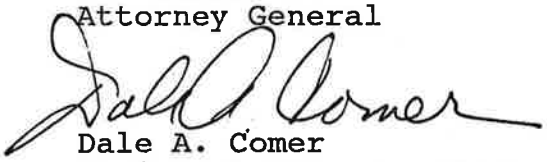
> to the levy of taxes does not, based upon our prior opinions, "exempt" such levies from the effect of statutorily imposed budget limitations.

Op. Att'y Gen. No. 92105 at 4, 5. In a similar fashion, in 1979-80 Rep. Att'y Gen. 236 (Opinion No. 167, dated October 31, 1979) we concluded that budget limitations imposed by the budget limit act at that time applied to the levy authorized for ambulance services for rural fire protection districts under § 35-514.02, the precise statute at issue in your opinion request.

We believe that our conclusions regarding the application of budget limitations to the tax levies of certain governmental subdivisions outlined above remain valid. As a result, it is our opinion that property taxes levied by a fire protection district for ambulance or fire protection services under Section 35-514.02 are not excluded from its lid limitation on anticipated aggregate (budgeted) property tax receipts as provided in Sections 77-3437 through 77-3441, as amended by LB 613.

Sincerely yours,

DON STENBERG
Attorney General



Dale A. Comer
Assistant Attorney General

050P044.895

Approved by:

Attorney General