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NO.
STATE OF NEBRASKA
OFFICIAL
SEP 14 1995
DEPT. OF JUSTICE

DATE: September 7, 1995

SUBJECT: Consolidation of Lease Agreements of State Boards, Agencies, Commissions and Departments of State Government

REQUESTED BY: Lawrence S. Primeau, Director
Department of Administrative Services

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

You have requested our opinion regarding consolidation of lease agreements for rental of office space located in the same office building facility. By way of background, you indicate that the State of Nebraska, through various state agencies and the Department of Administrative Services, have previously entered into five agreements for leasing office space for eight state agencies. Reportedly the lease agreements provide for varied office rental amounts and the lease termination dates are different. The Department of Administrative Services is considering consolidation of the different lease agreements to achieve cost savings.

The specific question you ask is whether applicable statutory provisions "prohibit the consolidation of these various leases?" It is generally our conclusion that the statutory provisions you have referred to do not prohibit the consolidation of the lease agreements by the Department of Administrative Services.

With certain exceptions, the authority for facilities administration which includes serving as the state leasing administrator is reposed in the State Building Division of the

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Department of Administrative Services.[1] Neb. Rev. Stat. § 81-1108.15 (1994) in pertinent part states:

> (1) The division shall have the primary functions and responsibilities of statewide facilities planning, facilities construction, and facilities administration and shall adopt and promulgate rules and regulations to carry out this section. . . .
>
> (4) Facilities administration shall include the following powers and duties:
>
> (a) To serve as state leasing administrator or agent for all facilities to be leased for use by the state and for all state-owned facilities to be rented to state agencies or other parties subject to section 81-1108.22. The division shall remit the proceeds from any rentals of state-owned facilities to the State Treasurer for credit to the State Building Revolving Fund; . . .
>
> (c) To procure, manage, and assign office space; . . .
>
> (f) To insure that all state-owned, state occupied, and vacant facilities are maintained or utilized to their maximum capacity or to dispose of such facilities through lease, sale, or demolition.

Consolidation of existing lease agreements by the building division of the Department of Administrative Services is consistent with statutory purposes. The legislative purposes are codified at Neb. Rev. Stat. § 81-1108.57 (1994) which provides:

> It is the intent of the Legislature to centralize and coordinate the real property resources owned and leased by the state. Currently many state buildings are left vacant by agencies as new leases are signed and agencies' missions change. Without centralized authority and

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[1]The provisions of section 81-1108.15(4)(a),(f) do not apply to (i) state-owned facilities to be rented to state agencies or other parties by the University of Nebraska, the Nebraska state colleges, the Department of Aeronautics, the Department of Roads, and the Board of Educational Lands and Funds, (ii) facilities to be leased for use by the University of Nebraska, the Nebraska state colleges, and the Board of Educational Lands and Funds, or (iii) facilities to be leased for nonoffice use by the Department of Roads.

expertise to allocate, maintain, and renovate current buildings, the state will continue to lease more space from outside sources, thus increasing state expenditures. To facilitate the goal of centralized authority, the changes proposed by Laws 1992, LB 1241, are required.

Other statutory provisions you have referred to also repose authority for leasing of real property in the Department of Administrative Services. Neb. Rev. Stat. § 81-1108.16 (1994) states in part, "(2) No contract for the leasing of real property shall be awarded without the approval of the Department of Administrative Services, . . . " Neb. Rev. Stat. § 81-1108.22 (1994) sets forth specific duties and responsibilities of the building division in providing for office space for boards, agencies, commissions, or departments of state government. Briefly summarized, the duties include filing of lease agreements, developing a system of cost and rental charges, and reviewing and approving requests for rental of office space outside the State Capitol or other state-owned property. Neb. Rev. Stat. § 81-1108.55 (1994) sets forth elements to be considered in awarding leases or contracts which by law are required to be based on competitive bids.

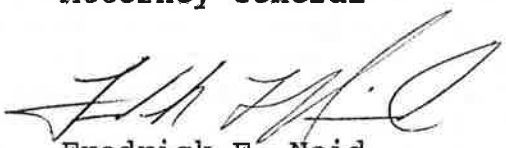
The statutory provisions do not "prohibit" consolidation of the various leases under consideration by the Department of Administrative Services. While we have reached this conclusion, it is important to note that certain review procedures are required prior to approval of a new lease agreement to consolidate the existing leases. For leases entered into after April 18, 1992, the Department should ascertain and determine that there are no state-owned facilities which are adequate, or may be "made adequate through cost effective renovation" to meet the needs of the board, agency, commission, or department. *See* sections 81-1108.22(2)(5); 81-1108.57 and 81-1108.16(2)(a).

Accordingly, it is our opinion that the Building Division of the Department may consolidate existing state leases but that the Department of Administrative Services must first ascertain that no state-owned property is adequate or could be made adequate to meet the needs of the using agencies. We further point out that if a new lease arrangement would result from consolidation of existing

leases, the Department of Administrative Services may need to arrange the contract through the bidding process in compliance with section 81-1108.16(2)(b).

Sincerely yours,

DON STENBERG
Attorney General



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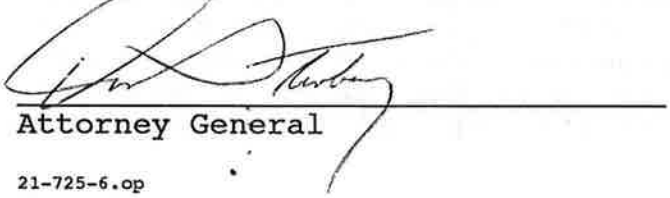

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