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RQ.
STATE OF NEBRASKA
OFFICIAL
DEC 18 1995
DEPT. OF JUSTICE

DATE: December 14, 1995

SUBJECT: Campaign Finance Limitation Act; Insufficient Funding

REQUESTED BY: David Heineman
State Treasurer

WRITTEN BY: Don Stenberg, Attorney General
Lynn A. Melson, Assistant Attorney General

You have requested our opinion on several questions concerning the Campaign Finance Limitation Act (Act). Neb. Rev. Stat. §§ 32-1601 to 32-1611 (1993 and Cum. Supp 1994). Three of your questions concern the statutory authority for particular regulations promulgated by the Nebraska Accountability and Disclosure Commission at 4 NAC 10.

Neb. Rev. Stat. § 84-905.01 (1994) provides that all regulations adopted under the Administrative Procedure Act must be submitted to the Attorney General for a determination as to their statutory authority and constitutionality. We have reviewed the regulations submitted to us by the Nebraska Accountability and Disclosure Commission. A copy of our letter to the Commission regarding the proposed regulations at 4 NAC 10 is enclosed for your information. We believe the answers to three of the questions which you pose have been answered within the scope of our statutory review of the proposed regulations. We were unable to approve the regulations in question because certain required forms were not attached to the regulations and made available for review during the promulgation process. We also made several comments concerning certain regulations which may be challenged. We believe there is sufficient statutory authority for the regulations.

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As we explained to the Commission, it is impossible for the Legislature to specify all regulations which are necessary for an agency to achieve the Legislature's purpose. Administrative boards and agencies may express their interpretation of laws they are charged with administering through the rulemaking procedure. "The primary function of a regulation is to interpret an ambiguous statute and clarify its meaning. ***Northern Natural Gas Co. v. O'Malley***, 277 F.2d 128, 134 (8th Cir. 1960). There are certain situations which could arise and which the Legislature simply has not addressed within the Campaign Finance Limitation Act. While an agency may not use its rulemaking authority to modify, alter, enlarge, or contradict the statutory provisions the agency is charged with administering, an agency has considerable discretion to interpret and flesh out those statutory provisions.

You have also asked whether, if a request for public funds is made after all appropriated funds for the Act have been expended, it is legal for the State Treasurer to sign a requested state warrant. The Legislature has created the Campaign Finance Limitation Cash Fund which consists of "money appropriated to it by the Legislature, amounts repaid by candidates pursuant to sections 32-1606 and 32-1607, and taxpayer contributions to the fund pursuant to section 77-27,119.04." Neb. Rev. Stat. § 32-1610 (Cum. Supp. 1994). It is possible that there will be insufficient funds to comply with all requests made by qualifying candidates. As the regulations recently adopted by the Nebraska Accountability and Disclosure Commission provide that available funds will be distributed in the order of the receipt of completed applications for public funds by qualifying candidates, it does not appear likely that the Commission will request additional state warrants once the appropriated funds have been expended.

If the Commission has completed the necessary paperwork to request that a state warrant be issued and a warrant has been properly issued by the Department of Administrative Services we see no legal reason for you to refuse to sign the state warrant. If you are then presented with a state warrant to be paid from the Campaign Finance Limitation Cash Fund at a time when all funds have been expended, your actions will be governed by Neb. Rev. Stat. §§ 77-2201 to 77-2214 (1990 and Cum. Supp. 1994). In particular, Neb. Rev. Stat. § 77-2203 provides as follows:

> Whenever a warrant is presented for payment to any such treasurer and there is not sufficient money on hand to the credit of the proper fund to pay the same, it shall be the duty of every such treasurer to enter such warrant in his warrant register for payment in the order of its presentation, and upon a warrant so presented and

> registered, he shall endorse registered for payment, with the date of registration, and shall sign such endorsement.

Neb. Rev. Stat. § 77-2206 further provides that, when there is sufficient money in the treasury to the credit of the proper fund against which a warrant is drawn, a treasurer must then give notice by mail or publication to the holders of registered warrants and pay each registered warrant in the order of its registration.

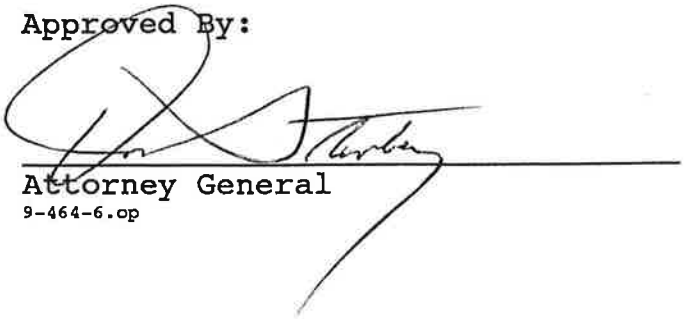
Finally, you inquire about the constitutionality of Neb. Rev. Stat. § 32-1608 which puts limits on aggregate contributions which candidates for specified offices may receive from political committees, corporations, unions, industry, trade, and professional associations. Under Neb. Rev. Stat. § 84-205(3), the Attorney General is authorized to give his or her opinion in writing, without fee, upon questions of law submitted to him or her by state officers, including the State Treasurer. This general obligation of the Attorney General to issue such opinions has been interpreted by the Nebraska Supreme Court to mean that state officers are entitled to advice upon questions of law which arise "in the discharge of their duties." *Fullmer v. State*, 94 Neb. 217, 142 N.W. 908 (1913). As we do not believe that your question concerning § 32-1608 has any application to your duties as State Treasurer, we must respectfully decline to respond to your question. We do, however, refer you to Op. Att'y Gen. No. 92120 (Nov. 9, 1992) in which we determined that the Campaign Finance Limitation Act is not unconstitutional in relation to certain other questions raised by the Nebraska Accountability and Disclosure Commission.

Sincerely,

DON STENBERG
Attorney General

Lynn A. Melson
Assistant Attorney General

Approved By:



Attorney General
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