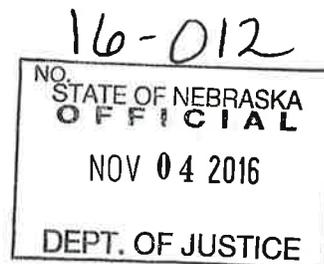




STATE OF NEBRASKA  
**Office of the Attorney General**

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**DOUGLAS J. PETERSON**  
ATTORNEY GENERAL



**SUBJECT:** Whether the State Treasurer may loan funds to Gage County pursuant to Neb. Rev. Stat. § 13-918 to pay a judgment awarded to the "Beatrice 6" under 42 U.S.C. § 1983.

**REQUESTED BY:** Don Stenberg  
State Treasurer

**WRITTEN BY:** Douglas J. Peterson, Attorney General  
Natalee J. Hart, Assistant Attorney General

**INTRODUCTION**

You have requested our opinion on three questions relating to the authority of the Nebraska State Treasurer to loan money to a political subdivision for the payment of a judgment against that political subdivision. Neb. Rev. Stat. § 13-918 (Reissue 2012) provides for a loan from the State Treasurer to a political subdivision for awards or judgments entered pursuant to the Political Subdivisions Tort Claims Act. The "Beatrice 6" have been awarded a judgment in federal court on claims brought under 42 U.S.C. § 1983 against Gage County, Nebraska in excess of \$28 million. Gage County lacks sufficient funds to pay the judgment in full and counsel for the Beatrice 6 have suggested that Gage County may borrow the money from the State Treasurer under

Neb. Rev. Stat § 13-918 to satisfy the judgment. You have posed the following questions:

- (1) Since the judgment [against Gage County in favor of the Beatrice 6] was pursuant to Federal Law rather than the Political Subdivisions Tort Claims Act, does § 13-918 provide legal authority for [the State Treasurer] to make a loan to Gage County, Nebraska?
- (2) [I]f so, is the loan limited to a maximum amount of Five Million Dollars since Neb. Rev. Stat. §§ 13-926 and 13-922 both limit total claims to Five Million Dollars arising out of a single occurrence? Given those limits, the Legislature's intent may have been to limit any loan to the maximum amount of recovery under the Political Subdivisions Tort Claims Act; and
- (3) [I]f § 13-918 does not authorize the State Treasurer to make a loan to Gage County, and given that state statutes generally provide authority to the Nebraska Investment Council to manage the state's investments, is there any other statute that would authorize the State Treasurer to make a loan to Gage County related to the judgments in question?

### **ANALYSIS**

Neb. Rev. Stat. § 13-918 provides:

Any awards or judgments pursuant to the Political Subdivisions Tort Claims Act and sections 16-727, 16-728, 23-175, 39-809, and 79-610 shall be paid in the same manner as other claims against the political subdivision. If insufficient funds are available to pay such awards or judgments the governing body shall include sufficient funds in the budget for the next fiscal year or biennial period. If constitutional or statutory provisions prevent any political subdivision from budgeting sufficient funds to pay any judgment in its entirety, the governing body shall pay that portion that can be paid under the constitution and laws and then shall make application to the State Treasurer for the loan of sufficient funds to pay the judgment in full. When application is made for such a loan, the State Treasurer shall make such investigation as he or she deems necessary to determine the validity of the judgment and the inability of the political subdivision to make full payment on the judgment, and the period of time during which the political subdivision will be able to repay the loan. After determining that such loan will be proper, the State Treasurer shall

make the loan from funds available for investment in the state treasury, which loan shall carry an interest rate of one-half of one percent per annum. The State Treasurer shall determine the schedule for repayment, and the governing body of the political subdivision shall annually budget and levy a sufficient amount to meet this schedule until the loan, with interest, has been repaid in full.

We have reviewed the letter sent to you as a courtesy copy from the attorneys for the Beatrice 6, signed by Jeffry Patterson. Mr. Patterson suggests that as an alternative to Gage County raising its tax levy to an amount sufficient to generate nearly \$30 million in revenue in the next fiscal year, the County may request a loan from the State Treasurer under Neb. Rev. Stat. § 13-918 to pay the judgment in question. For the reasons set forth below, we conclude that the suggested course of action set forth by Mr. Patterson in terms of a loan from the State Treasurer under Neb. Rev. Stat. § 13-918 is not a viable solution given that the Beatrice 6 judgment was awarded solely under a federal statute, 42 U.S.C. § 1983, and not the Political Subdivisions Tort Claims Act, Neb. Rev. Stat. §§ 13-901 through 13-928 (Reissue 2012).

**Whether the State Treasurer may loan Gage County funds under Neb. Rev. Stat. § 13-918 to pay the judgment in the “Beatrice 6” case**

Your first question is whether you may loan Gage County funds under Neb. Rev. Stat. § 13-918 to pay the judgment against it. We do not believe you may, given the nature of the claims brought by the Beatrice 6. Neb. Rev. Stat. § 13-918 provides that awards or judgments entered “pursuant to the Political Subdivisions Tort Claims Act” may be satisfied by the political subdivision borrowing money from the State Treasurer, with interest.

The language in statutes should be given its plain and ordinary meaning. *In re: Interest of Jeremy T., State of Nebraska, Douglas County v. Nebraska Department of Health and Human Services*, 257 Neb. 736, 600 N.W.2d 747 (1999). In the event that a statute is ambiguous, the legislative history of the act is examined for the main intent of the Legislature in enacting the statute. *State ex rel. Bouc v. School Dist. of City of Lincoln*, 211 Neb. 731, 320 N.W.2d 472 (1982).

The plain and ordinary language of Neb. Rev. Stat. § 13-918 states that it applies to judgments entered under the Political Subdivisions Tort Claims Act.<sup>1</sup> You stated in your request letter that the claims of the Beatrice 6 were made pursuant to 42 U.S.C.

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<sup>1</sup> It also applies to judgments entered under Neb. Rev. Stat. §§ 16-727, 16-728, 23-175, 39-809, and 79-610, none of which are applicable here, as they reference non-tort claims against a city, liability on county vehicles driven by employees, damages related to construction and repair of bridges, and school board liability for the transportation of students.

§ 1983. Our review of the complaints filed in the United States District Court for the District of Nebraska in these cases<sup>2</sup> indicates that the six Plaintiffs each brought three causes of action, all under 42 U.S.C § 1983.<sup>3</sup> None of the Plaintiffs' claims were brought under the Political Subdivisions Tort Claims Act, nor do they make any reference to those statutes. The judgment<sup>4</sup> entered by the federal court makes reference to only the three causes of action brought under 42 U.S.C. § 1983, not any pendent state law claims.<sup>5</sup> Consequently, under the plain language of Neb. Rev. Stat. § 13-918, a loan from the State Treasurer to Gage County under these circumstances would not fall within the parameters of this statute and the State Treasurer lacks the authority to make such a loan.

As Neb. Rev. Stat. § 13-918 expressly provides for the payment of judgments made under the Political Subdivision Tort Claims Act and five other sections of Nebraska statutes, it necessarily excludes payments of judgments made under any other state or federal law. "The legal principle of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the others) recognizes the general principle of statutory construction that an expressed object of a statute's operation excludes the statute's operation on all other objects unmentioned by the statute." *Pfizer Inc. v. Lancaster Cty. Bd. of Equal.*, 260 Neb. 265, 272, 616 N.W.2d 326, 335 (2000). See also *A & D Technical Supply Co. v. Nebraska Dep't of Revenue*, 259 Neb. 24, 31, 607 N.W.2d 857, 863 (2000). "[W]here a statute or ordinance enumerates the things upon which it is to operate, or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned, unless the legislative body has plainly indicated a contrary purpose or intention." *Nebraska City Ed. Ass'n v. School Dist. of Nebraska City, in Otoe Cty.*, 201 Neb. 303, 306, 267 N.W.2d 530, 532 (1978) (citing *Starman v. Shirley*, 162 Neb. 613, 76 N.W.2d 749 (1956)).

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<sup>2</sup> Dean v. County of Gage, Nebraska, et al., 4:09CV3144; White v. County of Gage, Nebraska, et al., 4:09CV3145; Gonzalez v. County of Gage, Nebraska, et al., 4:09CV3146; Winslow v. County of Gage, Nebraska, et al., 4:09CV3147; Taylor v. County of Gage, Nebraska, et al., 4:09CV3148; Shelden v. County of Gage, Nebraska, et al., 4:11CV3099.

<sup>3</sup> Each Plaintiff brought the following causes of action under 42 U.S.C. § 1983: (1) Malicious Prosecution/False Arrest/Fabricated Evidence, (2) Conspiracy to Violate Civil Rights, and (3) Violations Committed by Gage County, Gage County Sheriff's Office, and Gage County Attorney's Office.

<sup>4</sup> Dean v. County of Gage, Nebraska, et al., 4:09CV3144, Doc. # 570 (D.Neb., July 6, 2016).

<sup>5</sup> The Political Subdivision Tort Claims Act does not apply to claims of false arrest, false imprisonment, malicious prosecution, or abuse of process. Neb. Rev. Stat. § 13-910(7) (Reissue 2012). Additionally, even if this Act applied to the claims brought by the Beatrice 6, any suit brought under the Political Subdivisions Tort Claim Act is required to be preceded by a Tort Claim filed with the political subdivision. See Neb. Rev. Stat. §§ 13-905, 13-906 (Reissue 2012). The complaints filed by the Beatrice 6 in federal court make no reference to any such claim filed with the County.

For the sake of completeness, we also reviewed the legislative history of Neb. Rev. Stat. § 13-918, which offers no indication that anything further than what is plainly stated in the statute was meant by the Legislature in adopting this loan provision. "Inquiry into the legislative history requires that legislation be open for construction. A statute is open for construction when the language used requires interpretation or may reasonably be considered ambiguous." *State ex rel. City of Elkhorn v. Haney*, 252 Neb. 788, 566 N.W.2d 771 (1997). Here, the language in Neb. Rev. Stat. § 13-918 is not ambiguous. The Legislature intended for loans to be given to satisfy judgments entered under the Political Subdivisions Tort Claims Act. The judgment at issue was entered solely pursuant to 42 U.S.C. § 1983 and contained no judgment under the Political Subdivisions Tort Claims Act.

Based on the foregoing, we do not believe that the State Treasurer may loan funds to Gage County under Neb. Rev. Stat. § 13-918 to satisfy the judgment made in the Beatrice 6 case.

As the answer to your first question is in the negative, we do not need to address your second question regarding any limits of a loan given under Neb. Rev. Stat. § 13-918.

**Whether there are other provisions authorizing the State Treasurer to provide a loan to Gage County**

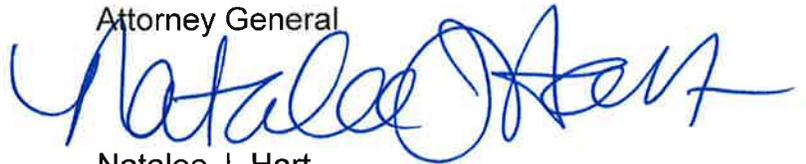
Your third question is whether there are any other state statutes which would authorize the State Treasurer to make a loan to Gage County in this circumstance. You did not indicate whether you thought another statute may apply in this circumstance, and Mr. Patterson pointed to no other statutes under which he believes a loan could be made to Gage County. We are not aware of any other provision in Nebraska statute which would allow the State Treasurer to loan money to a political subdivision in order for a judgment to be satisfied.

**CONCLUSION**

For the reasons set forth herein, we conclude that under the circumstances of the "Beatrice 6" case, the Nebraska State Treasurer lacks the authority to loan funds to Gage County under Neb. Rev. Stat. § 13-918 for the satisfaction of the judgment against Gage County.

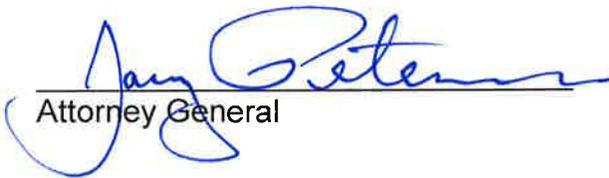
Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Natalee J. Hart  
Assistant Attorney General

Approved:



Attorney General