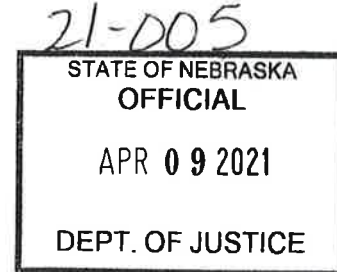




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**DOUGLAS J. PETERSON**  
ATTORNEY GENERAL



**SUBJECT:** Authority of an Electric Cooperative Corporation to Make Contributions or Expenditures Supporting or Opposing the Nomination or Election of Candidates for Public Office

**REQUESTED BY:** Frank J. Daley, Jr., Executive Director  
Nebraska Accountability and Disclosure Commission

**WRITTEN BY:** Douglas J. Peterson, Attorney General  
Lynn A. Melson, Assistant Attorney General

### INTRODUCTION

You have requested our opinion whether an electric cooperative corporation has statutory authority to make political contributions and expenditures as those terms are defined under the Nebraska Political Accountability and Disclosure Act ["NPADA"], an Act administered and enforced by the Nebraska Accountability and Disclosure Commission ["NADC"].

In your request letter you point out that Neb. Rev. Stat. § 49-1469 (Cum. Supp. 2020) provides that a corporation may make an expenditure or contribution, but you ask whether the corporate powers of an entity organized pursuant to the Electric Cooperative Corporation Act, Neb. Rev. Stat. §§ 70-701 to 70-738 (2018, Cum. Supp. 2020), include making a political expenditure or contribution.

### RELEVANT STATUTES

Looking first at the NPADA, Neb. Rev. Stat. § 49-1415(1) (Cum. Supp. 2020) defines a "contribution" as:

a payment, gift, subscription, assessment, expenditure, contract, payment for services, dues, advance, forbearance, loan, donation, pledge or promise of money or anything of ascertainable monetary value to a person, made for the purpose of influencing the nomination or election of a candidate, or for the qualification, passage, or defeat of a ballot question.

Section 49-1419 (2010) defines an “expenditure” as:

a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate or the qualification, passage, or defeat of a ballot question.

Neb. Rev. Stat. § 49-1469(1) (Cum. Supp. 2020) then provides that expenditures and contributions may be made by a “corporation, labor organization, industry, trade, or professional association, limited liability company, or limited liability partnership, which is organized under the laws of the State of Nebraska or doing business in this state . . . .”

Turning to the Electric Cooperative Corporation Act, the term “corporation” means a corporation organized pursuant to that Act. Neb. Rev. Stat. § 70-702 (2018). An electric cooperative corporation’s corporate powers include the authority (4) “to generate, manufacture, purchase, acquire, and accumulate electric energy and to transmit, distribute, sell, furnish, and dispose of such electric energy” and (17) “to do and perform . . . any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the corporation is organized.” Neb. Rev. Stat. § 70-704(4) and (17) (2018).

Neb. Rev. Stat. § 70-725 (2018) provides that each such corporation “shall be operated without profit to its members, but the rates, fees, rents, or other charges, for electric energy . . . shall be sufficient” to pay operating and maintenance expenses and for the creation of reserves. Section 70-726 (2018) then provides that the corporation’s revenue shall be used for payment of operating and maintenance expenses and thereafter to reserves. Revenue not required for those purposes shall be returned to the users of the services or products of the corporation.

## **ANALYSIS**

1. An electric cooperative corporation is a private, nonprofit corporation and not a governmental subdivision.

This office has previously determined that, for purposes of exemption from taxation of property, an electric cooperative corporation is not a governmental subdivision of the state. Op. Att’y Gen. No. 88030 (April 29, 1988). While that opinion addressed a prior version of Neb. Const. art. VIII, § 2, the discussion of the characteristics of an electric cooperative corporation remains applicable. In that opinion we reviewed the Electric

Cooperative Corporation Act, Neb. Rev. Stat. §§ 70-701 to 70-738. We opined that the statutory characteristics associated with electric cooperative corporations “compel the conclusion that electric cooperative corporations are not ‘governmental subdivisions’ of the state” for purposes of the constitutional tax exemption. Op. Att’y Gen. No. 88030 at 3.

The provisions of that Act are largely unchanged today. “Cooperative, nonprofit, membership corporations may be organized for the purpose of engaging in rural electrification and the furnishing of electric energy to persons in rural areas . . . .” Neb. Rev. Stat. § 70-703 (2018). They may be organized by any twenty or more residents of the territory to be served after filing articles of incorporation with the Secretary of State. Neb. Rev. Stat. §§ 70-705 through 70-709 (2018). The business of an electric cooperative corporation is managed by an elected board of directors. Neb. Rev. Stat. §§ 70-706(4) and 70-718 (2018).

Our 1988 opinion is consistent with subsequent case law. While the nature of an electric cooperative corporation was not directly at issue, the Nebraska Supreme Court distinguished between rural public power districts, organized as public corporations and political subdivisions, and the Nebraska Electric Generation and Transmission Cooperative, Inc., an “electrical cooperative corporation,” in a case discussing the historical background of an electric cooperative corporation within the state. *Southern Nebraska Rural Public Power Dist. v. Nebraska Electric Generation and Transmission Cooperative, Inc.*, 249 Neb. 913, 915, 546 N.W.2d 315, 317 (1996). More recently, the Court of Appeals described that same electric cooperative corporation as a “nonprofit cooperative.” *Northeast Public Power Dist. v. Nebraska Public Power District*, 24 Neb. App. 837, 839, 900 N.W.2d 196, 200 (2017).

2. The Nebraska Political Accountability and Disclosure Act authorizes an electric cooperative corporation to make political expenditures and contributions.

As stated above, Neb. Rev. Stat. § 49-1469(1) (Cum. Supp. 2020) provides that a corporation, which is organized under the laws of the State of Nebraska or doing business in this state, may make an expenditure or a contribution. “In the absence of anything to the contrary, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.” *Swift & Co. v. Nebraska Dep’t of Revenue*, 278 Neb. 763, 767, 773 N.W.2d 381, 385 (2009). See also *State ex rel. BH Media Group, Inc. v. Frakes*, 305 Neb. 780, 943 N.W.2d 231 (2020).

Here, the plain language of § 49-1469(1) allows any corporation, including a nonprofit corporation such as an electric cooperative corporation, to make political expenditures and contributions. Stated another way, there is no language in the NPADA which would except an electric cooperative corporation from the general rule that corporations may make expenditures and contributions.

3. The Electric Cooperative Corporation Act does not clearly prohibit an electric cooperative corporation from making political expenditures and contributions.

You have called our attention to provisions of the Electric Cooperative Corporation Act which might be construed to restrict the use of revenue by such corporations. Specifically, your letter states that Neb. Rev. Stat. § 70-725 (2018) “generally provides that the revenue of the corporation shall be used: (1) to pay operating expenses and obligations, and (2) for the creation of reserves.” And, you point out that Neb. Rev. Stat. § 70-726 (2018) provides that revenue not needed for these purposes shall be returned to users from time to time. We agree that these statutes raise questions concerning an electric cooperative corporation’s authority to use its revenue for purposes that do not clearly fall within these provisions.

We have found no case law that discusses these provisions. Section 70-725 requires an electric cooperative corporation to “be operated without profit to its members,” but that the rates and fees charged shall be sufficient to “pay all operating and maintenance expenses necessary or desirable for the prudent conduct of its business . . . .” Section 70-726 also refers to the payment of operating expenses as a first priority for the use of revenue received. While the term “operating expenses” would not generally be thought to include political expenditures or contributions, the statutes appear to give some discretion to the corporation to determine which operating expenses are “necessary or desirable.”

We also note that Neb. Rev. Stat. § 70-704 (2018) provides a list of corporate powers, ending with “(17) to do and perform, either for itself or its members . . . any and all acts and things and to have and exercise any and all powers as may be necessary, convenient, or appropriate to effectuate the purpose for which the corporation is organized.” Again, this statutory language appears to give the corporation some discretionary authority to exercise powers that are “necessary, convenient, or appropriate” to carrying out the purposes of its incorporation. Whether a particular act is necessary or convenient might depend upon particular facts and circumstances. For example, the meaning of “necessary,” particularly when used in a statute, has been described by the Nebraska Supreme Court to “mean anything from ‘indispensable’ to ‘convenient.’” *In re Application A-16642*, 236 Neb. 671, 698, 463 N.W.2d 591,609 (1990). The articles of incorporation or by-laws of a particular electric cooperative corporation might also address the corporation’s powers.

For these reasons, while we agree that certain provisions of the Electric Cooperative Corporation Act could be construed to limit a corporation’s use of revenue, we cannot state with any certainty whether that Act prohibits such a corporation from making political contributions or expenditures.

## CONCLUSION

In summary, we conclude that an electric cooperative corporation is a private, nonprofit corporation and not a governmental entity. As a corporation, it is an entity that is authorized by Neb. Rev. Stat. § 49-1469(1) to make contributions and expenditures as those terms are defined in the Nebraska Political Accountability and Disclosure Act. There is no language within the NPADA which would except an electric cooperative corporation from that statutory grant of authority.

With regard to your particular question concerning provisions of the Electric Cooperative Corporation Act, the answer is unclear. We agree that provisions in § 70-725 could be construed to limit a corporation's use of revenue. However, a corporation has some degree of discretion under § 70-704(17) in exercising its corporate powers, and it is not clear whether the authority to make political contributions or expenditures falls within that discretionary authority.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Lynn A. Melson  
Assistant Attorney General

Approved by:



Attorney General