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ATTORNEY GENERAL

No. 22-007  
STATE OF NEBRASKA  
OFFICIAL

NOV 22 2022

DEPT. OF JUSTICE

**SUBJECT:** Eligibility of Public Power Districts to Provide Advanced Metering Infrastructure Services and Related Administrative Services Under Neb. Rev. Stat. § 70-625(6).

**REQUESTED BY:** Senator Myron Dorn  
Nebraska Legislature

**WRITTEN BY:** Douglas J. Peterson, Attorney General  
Darrin F. Schultz, Assistant Attorney General

### INTRODUCTION

Nebraska law currently provides that “a public power district may own and operate, contract to operate, or lease energy equipment and provide billing, meter reading, surveys, or evaluations and other administrative services, but not to include natural gas services, of public utility systems within a district’s service territory.” Neb. Rev. Stat. § 70-625(6) (Cum. Supp. 2020). You request our opinion on the eligibility of public power districts to provide advanced metering infrastructure [“AMI”] services and related administrative services under § 70-625(6).

As a reminder, it is our long-standing policy not to provide opinions to members of the Legislature on the interpretation or constitutionality of existing statutes. Op. Att’y Gen. No. 157 (Dec. 24, 1985). Rather, we only issue opinions to state legislators which pertain “to pending or proposed legislation.” *Id.* at 1. You reference no pending or proposed

legislation in your request letter. Nevertheless, your letter states you are considering introducing legislation to “clarify” the meaning of § 70-625(6). Accordingly, we will proceed to consider your question.

### ANALYSIS

Public power districts are “public corporation[s]” and “political subdivision[s]” of the State. Neb. Rev. Stat. § 70-602 (2018). The Nebraska Supreme Court has stated that as “public corporations,” public power districts “are subject to the plenary control of the Legislature,” and, “[i]n the exercise of such power the Legislature may authorize, limit, control, or even destroy such public corporations.” *Wittler v. Baumgartner*, 180 Neb. 446, 451, 144 N.W.2d 62, 67 (1966). Absent statutory authority to perform a service, a public power district shall be presumed prohibited from doing so. See *Schroll v. City of Beatrice*, 169 Neb. 162, 170-71, 98 N.W.2d 790, 795 (1959) (quoting *State ex rel. Johnson v. Consumers Public Power Dist.* 143 Neb. 753, 769-70, 10 N.W.2d 784, 795 (1943)) (“It seems clear that an express proviso that a corporation shall not do certain acts is no stronger than the failure to give authority, express or implied, to do them, for powers not granted either expressly or impliedly, are impliedly prohibited.”).

“[S]tatutory interpretation begins with the text, and the text is to be given its plain and ordinary meaning. It is a fundamental canon of statutory construction that words generally should be interpreted as taking their ordinary meaning at the time the Legislature enacted the statute.” *Dutcher v. Nebraska Dep’t of Corr. Servs.*, 312 Neb. 405, 412-13, 979 N.W.2d 245, 251 (2022). “If the language of a statute is clear, the words of such statute are the end of any judicial inquiry regarding its meaning.” *Stewart v. Nebraska Dep’t of Revenue*, 294 Neb. 1010 1017, 885 N.W.2d 723, 729 (2016). Thus, our analysis begins with the text of the statute. Neb. Rev. Stat. § 70-625(6) provides:

(6) Notwithstanding any law, ordinance, resolution, or regulation of any political subdivision to the contrary, each public power district may receive funds and extend loans pursuant to the Nebraska Investment Finance Authority Act or pursuant to this section. In addition to the powers authorized by Chapter 70 and specified in its petition for creation, as amended, and without the need for further amendment thereto, a public power district may own and operate, contract to operate, or lease energy equipment and provide billing, meter reading, surveys, or evaluations and other administrative services, but not to include natural gas services, of public utility systems within a district's service territory.

Except for natural gas services, § 70-625(6) authorizes public power districts to “own and operate, contract to operate or lease energy equipment” and “provide billing, meter reading, surveys, or evaluations and other administrative services... of public utility systems within a district’s service territory.” “Energy equipment,” within Chapter 70, article 6, “includes, but is not limited to, equipment or facilities used or useful to generate, produce, transmit, or distribute power, heated or chilled water, or steam for use by the district or the district’s commercial and industrial customers.” Neb. Rev. Stat. § 70-601(7)

(2018). In your request letter, you describe AMI as “a utility metering setup which is an integrated system of smart meters, communications networks, and data management systems that enables two-way communication between utilities and customers.” You also state that “AMI, in and of itself, is not considered ‘operating’ a utility system.” Based on these general descriptions, AMI is not “used or useful to generate, produce, transmit, or distribute power, heated or chilled water, or steam” under the definition of “energy equipment” in § 70-601(7).

Nor is it likely that AMI qualifies as “billing, meter reading, surveys, or evaluations and other administrative services” under § 70-625(6). As stated above, you represent that AMI is “an integrated system of smart meters, communications networks, and data management systems that enables two-way communication between utilities and customers.” You “believe that these AMI services and administrative services may be provided with regard to the electric, water, and natural gas systems.” It is unclear, however, whether AMI is in fact limited to “billing, meter reading, surveys, or evaluations and other administrative services,” as the Legislature spelled out in § 70-625(6). AMI, and its accompanying “smart grid” technology, appear to provide capabilities beyond the type of services itemized in § 70-625(6).<sup>1</sup> Without more information detailing the functional parameters of AMI technology,<sup>2</sup> we are unable to conclude that the Legislature has authorized public power districts under § 70-625(6) to provide AMI services to other public utilities within a district’s service territory.<sup>3</sup>

## CONCLUSION

It is not clear that public power districts have authority to provide AMI services under § 70-625(6). AMI does not fit the definition of “energy equipment” in § 70-601(7), and appears to involve more than billing, meter reading, surveys, evaluations, and related

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<sup>1</sup> See, e.g., 220 Ill. Comp. Stat. 5/16-108.6(a) (smart grid functions include, among others, “the ability to develop, store, send, and receive digital information concerning electricity use, costs, prices, time of use, nature of use, storage, or other information ... [and] use digital information to operate functionalities on the electric utility grid that were previously electro-mechanical or manual”); Okla. Stat. tit. 17, § 710.2 (“[T]he use of advanced metering technology may give electric utilities and consumers access to more detailed usage data than that collected by conventional electric utility services.”); see also U.S. Dep’t of Energy, *Advanced Metering Infrastructure and Customer Systems* 4 (Sept. 2016) (describing how AMI offers “functions that were not previously possible or had to be performed manually, such as the ability to automatically and remotely measure electricity use, connect and disconnect service, detect tampering, identify and isolate outages, and monitor voltage”), [https://www.energy.gov/sites/prod/files/2016/12/f34/AMI%20Summary%20Report\\_09-26-16.pdf](https://www.energy.gov/sites/prod/files/2016/12/f34/AMI%20Summary%20Report_09-26-16.pdf).

<sup>2</sup> See U.S. Dep’t of Energy, *Data Access and Privacy Issues Related to Smart Grid Technologies* 6 (Oct. 2010) (noting that “experience with Internet technologies strongly suggests that it may be difficult or impossible to predict the uses to which a ‘smarter’ and more interactive electrical grid will ultimately be put”), [https://www.energy.gov/sites/default/files/gcprod/documents/Broadband\\_Report\\_Data\\_Privacy\\_10\\_5.pdf](https://www.energy.gov/sites/default/files/gcprod/documents/Broadband_Report_Data_Privacy_10_5.pdf).

<sup>3</sup> Because we conclude that AMI likely is not within the grant of authorized activity under § 70-625(6), we need not address whether the exclusion for “natural gas services” would apply to AMI.

administrative services. Considering this uncertainty, you may wish to propose legislation clarifying that AMI fits within the services contemplated by the Legislature in § 70-625(6).

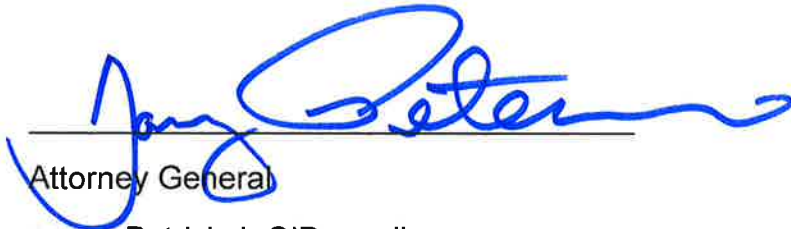
Very truly yours,

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Approved by:



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pc: Patrick J. O'Donnell  
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