

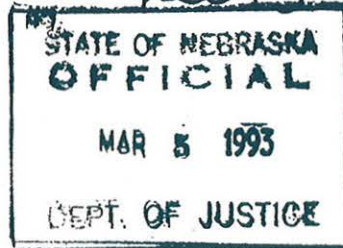


STATE OF NEBRASKA  
**Office of the Attorney General**

2115 STATE CAPITOL BUILDING  
 LINCOLN, NEBRASKA 68509-8920  
 (402) 471-2682  
 TDD (402) 471-2682  
 CAPITOL FAX (402) 471-3297  
 1235 K ST. FAX (402) 471-4725

**DON STENBERG**  
 ATTORNEY GENERAL

L. STEVEN GRASZ  
 SAM GRIMMINGER  
 DEPUTY ATTORNEYS GENERAL



**DATE:** March 4, 1993

**SUBJECT:** Duties of the Commission for Postsecondary Education to Review and Approve or Disapprove All Capital Construction Projects Proposed by the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges Pursuant to Neb. Rev. Stat. §§ 85-401 to 85-411 (1987), as Amended

**REQUESTED BY:** Senator Kurt A. Hohenstein  
 Nebraska State Legislature

**WRITTEN BY:** Don Stenberg, Attorney General  
 Harold I. Mosher, Senior Assistant Attorney General

**Question Presented**

As used in the Coordinating Commission for Postsecondary Education Act, do the words "tax funds" include funds which are pledged to pay the principal and interest on revenue bonds issued pursuant to Neb. Rev. Stat. §§ 85-401 to 85-411 (1987), as amended.

**Discussion**

Subject to certain conditions, the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges have statutory authority to issue revenue bonds and to repay the principal and the interest thereon solely out of sources other than funds derived from taxation. Neb. Rev. Stat. § 85-403 (Cum. Supp. 1992) specifically states, in part, as follows:

Bonds issued under the provisions of sections 85-403 to 85-411 are not an obligation of the State of Nebraska, and no tax shall ever be levied to raise funds for the payment thereof or interest thereon. The bonds shall not

David K. Arterburn  
 L. Jay Bartel  
 J. Kirk Brown  
 David T. Bydalek  
 Laurie Smith Camp  
 Elaine A. Chapman  
 Delores N. Coe-Barbee

Dale A. Comer  
 James A. Elworth  
 Lynne R. Fritz  
 Royce N. Harper  
 William L. Howland  
 Marilyn B. Hutchinson  
 Kimberly A. Klein

Donald A. Kohtz  
 Joseph P. Loudon  
 Charles E. Lowe  
 Lisa D. Martin-Price  
 Lynn A. Melson  
 Harold I. Mosher  
 Fredrick F. Neid

Marie C. Pawol  
 Kenneth W. Payne  
 Paul N. Potadle  
 Jan E. Rempe  
 James H. Spears  
 Mark D. Starr

John R. Thompson  
 Barry Wald  
 Terri M. Weeks  
 Alfonza Whitaker  
 Melanie J. Whittamore-Mantzios  
 Linda L. Willard

Senator Kurt A. Hohenstein  
Page -2-  
March 4, 1993

constitute a debt of the board issuing the same and shall be paid solely out of money derived from their revenue and earnings as provided in sections 85-403 to 85-411. \*  
\* \*.

Certain terms, as used in the Coordinating Commission for Postsecondary Education Act, are defined by statute. Neb. Rev. Stat. § 85-1402(7) (Supp. 1992) states: "Tax funds designated by the Legislature shall mean all state tax revenue and all property tax revenue." Thus, funds available from the operation of facilities which are financed by issuing revenue bonds are not "tax funds" as those words are used in the Coordinating Commission for Postsecondary Education Act but are funds which the Legislature has solemnly pledged for the payment of principal and interest on revenue bonds as provided in Neb. Rev. Stat. §§ 85-403 to 85-411 (1987), as amended.

We wish to point out that the Coordinating Commission for Postsecondary Education has certain duties with respect to particular capital construction projects, including those funded by revenue bonds. Specifically, it has a duty to "review and approve or disapprove all capital construction projects proposed by the Board of Regents of the University of Nebraska and the Board of Trustees of the Nebraska State Colleges pursuant to Neb. Rev. Stat. §§ 85-401 to 85-411 (Cum. Supp. 1992). See Neb. Rev. Stat. § 85-1415 (Cum. Supp. 1992). Certain capital construction projects, of course, also require legislative approval.

Respectfully submitted,

DON STENBERG  
Attorney General

  
Harold I. Mosher  
Senior Assistant Attorney General

APPROVED:

  
Attorney General

20-02-14

cc: Patrick J. O'Donnell  
Clerk of the Legislature