

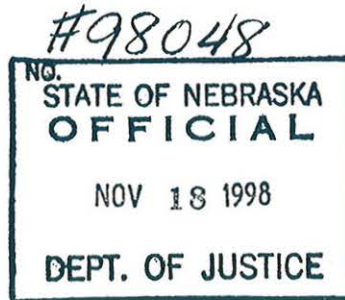


STATE OF NEBRASKA  
Office of the Attorney General

2115 STATE CAPITOL BUILDING  
LINCOLN, NE 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

STEVE GRASZ  
LAURIE SMITH CAMP  
DEPUTY ATTORNEYS GENERAL



DATE: November 16, 1998

SUBJECT: Whether Neb. Rev. Stat. § 3-239 Applies to County Airport Authorities

REQUESTED BY: Chris Peterson, Senator  
Nebraska State Legislature

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

You have requested the opinion of this office regarding the applicability of Neb. Rev. Stat. § 3-239 to county airport authorities. Neb. Rev. Stat. § 3-239 (1997) provides, in part, that certain political subdivisions must obtain the approval of the Department of Aeronautics before submitting an airport project application to the federal government, and must designate the Department of Aeronautics as an agent to accept and disburse federal funds granted for such a project. Your question is whether county airport authorities are subject to those statutory provisions.

David K. Arterburn  
L. Jay Bartel  
Kristine D. Brenneis  
J. Kirk Brown  
David T. Bydalek  
Dale A. Comer  
Suzanna Glover-Etrich  
Royce N. Harper

Lauren L. Hill  
Amy Hollenbeck  
William L. Howland  
Marilyn B. Hutchinson  
Therese N. James  
Kimberly A. Klein  
Jennifer S. Lilledahl

Charles E. Lowe  
Lisa D. Martin-Price  
Lynn A. Melson  
Donald J. B. Miller  
Ronald D. Moravec  
Fredrick F. Neid  
Marie C. Pawol

Paul N. Potadle  
Mark D. Raffety  
Carla Heathershaw Risko  
Hobert B. Rupe  
James D. Smith  
James H. Spears  
Mark D. Starr

Martin Swanson  
David R. Tarvin, Jr.  
John R. Thompson  
Barry Waid  
Terri M. Weeks  
Melanie J. Whittamore-Mantzios  
Linda L. Willard



Neb. Rev. Stat. § 3-239 describes the political subdivisions subject to its provisions as a "city, county, village, or authority in the state whether acting alone or jointly with another city, county, village, or authority, or with the state, . . . ." Our review of prior statutes reveals that, at the time § 3-239 was enacted in 1947, there was no statutory definition of "authority" within the statutes pertaining to airports and no specific statutes authorizing the creation of either city or county airport authorities. The chairman's statement with regard to § 3-239 refers generally to the intent for federal funds to be channeled through a state agency rather than paid directly to governmental subdivisions. Committee Records on LB 353, 60th Sess., 1947.

In 1957 the Legislature enacted the Cities Airport Authorities Act, which authorized cities and villages to create airport authorities. Neb. Rev. Stat. §§ 3-501 through 3-514 (Cum. Supp. 1957). That Act also included amendments to Neb. Rev. Stat. §§ 3-201 and 3-239 and those statutes were then considered part of the Act. We note that the original language merely referred to "this Act" and that it appears the Revisor of Statutes later clarified this language by specifically referring to §§ 3-201, 3-239 and 3-501 to 3-514. Those statutory references now appear throughout the Act. As a result, Neb. Rev. Stat. § 3-501 (1997) now provides that "[A]s used in sections 3-201, 3-239 and 3-501 to 3-514, unless the context otherwise requires: (1) Authority shall mean an airport authority which shall be a body politic and corporate organized pursuant to § 3-502; . . . ." As § 3-502 authorizes the creation of city airport authorities, the term "authority" as used in § 3-239 must then be defined as a city airport authority. While statutes authorizing the creation of county airport authorities were subsequently enacted as Article 6 of Chapter 3 in 1969, those statutes include no definitions of terms such as "authority" and § 3-239 was not amended at that time:

It is possible that the Legislature, in amending § 3-239 as part of the 1957 Cities Airport Authority Act, may have overlooked the significance of the new definition of "authority" as it relates to § 3-239. However, as stated by the Nebraska Supreme Court, "[I]t is presumed that the Legislature has full knowledge and information of the subject matter of the statute, as well as the relevant facts relating to prior law and existing pertinent legislation, and has acted with respect thereto." *Sanitary and Improvement Dist. No. 222 of Douglas County v. Metropolitan Life Ins. Co.*, 201 Neb. 10, 14, 266 N.W.2d 73, 75 (1978). Therefore, when § 3-239 is read in light of the Cities Airport Authorities Act



Chris Peterson, Senator  
November 16, 1998  
Page -3-

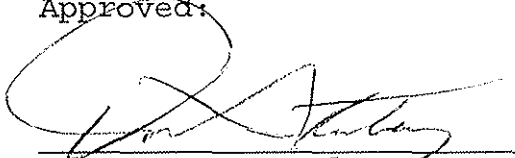
and, in particular, § 3-501(1), we must conclude that the Legislature intended the term "authority" as used in § 3-239 to refer only to city airport authorities. County airport authorities are, thus, not currently subject to the requirements of § 3-239.

Sincerely,

DON STENBERG  
Attorney General

  
Lynn A. Melson  
Assistant Attorney General

Approved:

  
Attorney General

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

09-141-16

