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NE. STATE OF NEBRASKA
OFFICIAL
MAY 31 1994
DEPT. OF JUSTICE

DATE: May 24, 1994

SUBJECT: Filing of Audit Reports of Political Subdivisions With the Auditor of Public Accounts; Lincoln-Lancaster Public Building Commission and the Omaha-Douglas County Public Building Commission

REQUESTED BY: John Breslow, Auditor of Public Accounts

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

You have asked the Attorney General whether the Lincoln-Lancaster Public Building Commission and the Omaha-Douglas County Public Building Commission are required to file audit reports with the Auditor of Public Accounts under the provisions of Neb. Rev. Stat. § 84-304 (Supp. 1993) or other legislative enactments. It is our opinion that public building commissions are not required to file audit reports with the Auditor of Public Accounts.

The question is raised in the context that the Auditor of Public Accounts is required by Neb. Rev. Stat. § 84-304.01 (Supp. 1993) to establish minimum standards applicable to audit reports of political subdivisions required to be filed with the Auditor of Public Accounts. Your question relates to which political subdivisions of the state are required to file audit reports with the Auditor of Public Accounts. We believe that political subdivisions expressly or impliedly required by statute are compelled to file audit reports.

Review of pertinent statutes reflect that the political subdivisions listed in section 84-304(c)(ii) and those political subdivisions specifically required by other statutes should file

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audit reports with the Auditor of Public Accounts. Duties of examination of the Auditor of Public Accounts are set forth in section 84-304 which in part states:

> **84-304. Auditor; powers and duties; assistant deputies; qualifications; duties; section, how construed.** (1) It shall be the duty of the Auditor of Public Accounts:
>
> . . .
>
> (c)(i) To examine or cause to be examined, at such time as he or she shall determine, books, accounts, vouchers, records, and expenditures of all state officers, state bureaus, state boards, state commissioners, the state library, societies and associations supported by the state, state institutions, state colleges, and the University of Nebraska, except when required to be performed by other officers or persons, (ii) to examine or cause to be examined, at the expense of the political subdivision, when the Auditor of Public Accounts determines such examination necessary or when requested by the political subdivision, the books, accounts, vouchers, records, and expenditures of an agricultural association formed under Chapter 2, article 20, county agricultural society, joint airport authority formed under Chapter 3, article 7, city or county airport authority, development district, regional council, drainage district, fire protection district, health district, historical society, hospital authority or district, county hospital, housing authority, irrigation district, regional, county, or municipal library, community mental health center, railroad transportation safety district, rural water district, township or the Wyuka Cemetery, and . . .

(Emphasis supplied.)

It is necessary that audit reports of the political subdivisions listed in section 84-304(c)(ii) be filed so that the Auditor would be able to fulfill his statutory duties set forth in the statute.

Other statutes specifically require that certain political subdivisions file audit reports. For example, public power and irrigation districts organized under the provisions of Neb. Rev. Stat. §§ 70-601 to 70-681 (1990, Cum. Supp. 1992, and Supp. 1993)

include the filing requirement. Neb. Rev. Stat. § 70-623 (1991) states:

> **70-623. Fiscal year, annual audit; filing.** The fiscal year of the district shall coincide with the calendar year. The board of directors, at the close of each year's business, shall cause an audit of the books, records, and financial affairs of the district to be made by a certified public accountant or firm of such accountants, who shall be selected by the district. The audit shall be conducted in the manner prescribed in section 84-304.01. When the audit has been completed, written copies of the audit shall be placed and kept on file at the principal place of business of the district and **shall be filed with the Auditor of Public Accounts** and the Nebraska Power Review Board within one hundred twenty days after December 31 of each year.

Public building commissions are not listed in section 84-304 and the establishing statutes do not specifically require that public building commissions file their audit reports with the Auditor. The only reference to audit or examination is found in Neb. Rev. Stat. § 13-1305 (1991) which in part provides, "[T]he chief auditing officer of the county and his or her legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of such commission, including its receipts, disbursements, contracts, leases, sinking funds, and investments and any other matters relating to its financial standing. . . ."

You have noted that your question addresses similar issues of statutory construction that exist in implementating provisions of the Nebraska Budget Act and budget limit provisions. In informal letter opinion No. I92-087, December 29, 1992, we concluded that a statute that lists certain named governing bodies was not intended to be an exclusive listing of political subdivisions that the Budget Act applies to. This conclusion was reached because of the statutory language used and because of legislative history which reflects legislative intent that the Budget Act and budget limit provisions apply to all political subdivisions of the state. By contrast, the language employed in Section 84-304 indicates that the listing of political subdivisions is intended to be exclusive.

Further, you have indicated that political subdivisions listed in Section 84-304(c)(ii) and those expressly required in other statutes are the political subdivisions required to file audit reports is the construction applied by your office. Our conclusion in part is based on implementation of the statutory language by

your office. The Auditor of Public Accounts is the executive officer of the state charged with responsibilities for compliance by political subdivisions for filing of audit reports and for establishing audit report standards. In construing statutes, the courts accord deference to interpretation and application of legislative acts by administrative agencies and officers charged with enforcement of the statutory provisions. ***Vulcraft v. Karnes***, 229 Neb. 676, 428 N.W.2d 505 (1988). And, such rulings and interpretations by an administrative agency to which the statute is directed are entitled to weight. ***ATS Mobile Tele., Inc. v. Curtin Call Communications, Inc.***, 194 Neb. 404, 232 N.W.2d 248 (1975).

For these reasons, we conclude that public building commissions are neither expressly nor impliedly required by statute to file audit reports with the Auditor of Public Accounts.

Sincerely yours,

DON STENBERG
Attorney General

Fredrick F. Neid
Assistant Attorney General

Approved By:

Attorney General

21-576-6.9