

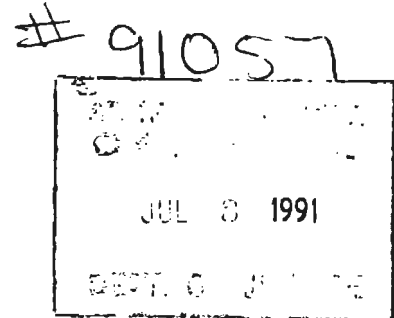


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DATE: June 25, 1991

SUBJECT: May the State Department of Education distribute the funds remaining in the 1990-1991 appropriation to the Nebraska Mathematics and Science Teacher Tuition Assistance Act subsequent to the operative date of LB 511 of the Ninety-Second Legislature, First Session (1991).

REQUESTED BY: Joe E. Lutjeharms
Commissioner of Education

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

Section 97 of LB 511 of the Ninety-Second Legislature, First Session (1991), provides that "[s]ince an emergency exists this act shall be in full force and take effect, from and after its passage and approval, according to law." It was approved by the Governor June 10, 1991. Among other things, section 96 of LB 511 repealed Neb.Rev.Stat. §79-12,145 (Supp. 1990). Prior to its repeal, this statute provided as follows:

The financial assistance granted under the Nebraska Mathematics and Science Teacher Tuition Assistance Act shall be funded one hundred percent by funds appropriated by the Legislature. One hundred thousand dollars plus the cost of administration of such act shall be appropriated per fiscal year for such purpose.

You have asked if the State Department of Education has the authority to distribute the funds remaining in the 1990-1991 appropriation to the Nebraska Mathematics and Science Teacher Tuition Assistance Act after June 10, 1991.

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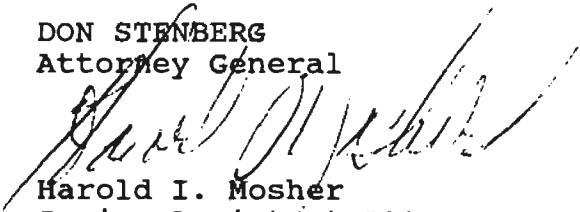
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June 25, 1991
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Legislative bills defining the powers of state agencies and government officials are to be distinguished from legislative bills which make appropriations of public funds for the salaries of the officers of the Government. See Neb. Const., Art. III, §22; 1975-1976 Neb. Rep. General No. 214 at p. 296. Neb.Rev.Stat. §79-12,145 (Supp. 1990) did not appropriate funds but merely directed each session of the Legislature to appropriate a sum certain to the Nebraska Mathematics and Science Teacher Act. Obviously, each session of the Legislature could act pursuant thereto or it could amend or repeal Neb.Rev.Stat. §79-12,145 (Supp. 1990). The Ninety-Second Legislature, First Session, elected to repeal it with the passage of LB 511, which was approved by the Governor on June 10, 1991. Equally obvious, the repeal of Neb.Rev.Stat. §79-12,145 (Supp. 1990) did not repeal funds appropriated by section 13(5) of LB 813 of the Ninety-First Legislature, Second Session (1989), whereby the Nebraska Mathematics and Science Teacher Tuition Assistance Act was funded by the Legislature for the 1990-1991 fiscal year. We are therefore of the opinion that the State Department of Education may distribute the funds remaining in the 1990-1991 appropriation to the Nebraska Mathematics and Science Teacher Assistance Act after June 10, 1991, provided such funds are properly encumbered.

Respectfully submitted,

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Approved by:



Attorney General

20-45-3