

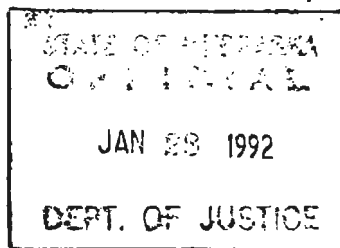
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DATE: January 24, 1992

SUBJECT: Oversight Responsibilities of the Research and Development Authority under the Research and Development Authority Act, Neb.Rev.Stat. §§ 58-401 et seq.

REQUESTED BY: Senator Rex Haberman, Nebraska State Legislature

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

You have inquired about the duty and responsibility of the Research and Development Authority to monitor activities of business development corporations described in Neb.Rev.Stat. § 58-440 (Cum. Supp. 1990). Specifically, you ask whether it is the duty of the Authority under the Act to monitor operations and activities of the North Omaha Business Development Corporation. You have indicated that general funds in the amount of two million dollars appropriated to the Authority have been "transferred" from the Authority to the North Omaha Business Development Authority.

Following review of the Act, it is our opinion that the Authority is required to monitor activities and operations of business development corporations for compliance with Neb.Rev.Stat. § 58-437 (Reissue 1988).

At the outset, it is important to point out that the Authority is a body politic and corporate, not a state agency, but an independent instrumentality governed by a board of nine members to carry out its purposes. The purposes of the Authority are stated in Neb.Rev.Stat. § 58-403 (Cum. Supp. 1990) and include formation

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of and participation in business development corporations. Consequently, the Authority is not a state agency, board or other regulatory body of the state. The primary role and function of the Authority is generally participatory in nature to foster and promote business development and employment growth.

While the Authority's role is participatory and to provide research and other assistance, the Authority is responsible for oversight of activities and operations of business development corporations to complete its statutory duties. Neb.Rev.Stat. § 58-437 (Reissue 1988) requires that the Authority create a comprehensive review program which includes "[e]stablishment of an ongoing monitoring program of the activities, grants, programs and services of the authority . . ."; and that the Authority submit an annual report to the Governor and the Clerk of the Legislature.

You have not indicated the method of transfer of funds from the authority to the Business Development Corporation. The nature of the transfer of funds amounts could impose additional duties or responsibilities on the Authority. For example, if the funds were disbursed under a loan arrangement, the Authority would necessarily supervise the loan to ascertain that loan terms are complied with. On the other hand, if the funds were transferred to the Corporation under a grant or for funding of a particular program with no requirement or expectation that the funds be repaid, the Authority would have little or no direct supervisory responsibility.

Accordingly, we conclude that the Authority has certain oversight responsibilities provided by statute which primarily consist of monitoring the programs and activities of the Corporation. Additional responsibilities may be imposed or required based on the relationship between the Authority and the Corporation pursuant to agreement and funding mechanisms utilized.

Sincerely yours,

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

Approved By:



Attorney General

21-261-6.91