

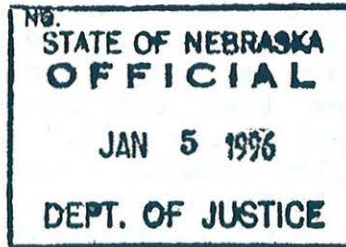


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DATE: January 4, 1996

SUBJECT: Neb. Rev. Stat. § 49-1201; Presumption of Mailing

REQUESTED BY: Dannie Trautwein, Executive Director
Nebraska Accountability and Disclosure Commission

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

This is in response to your request for the opinion of this office regarding the statutory presumption of mailing found at Neb. Rev. Stat. § 49-1201 (1993). You explained that the Commission, in administering its responsibilities, must often determine whether filings have been timely made as required by law. Section 49-1201 provides as follows:

Any report, claim, tax return, statement, or any payment required or authorized to be filed or made to the State of Nebraska, or to any political subdivision thereof, which is: (1) Transmitted through the United States mail; (2) mailed but not received by the state or political subdivision; or (3) received and the cancellation mark is illegible, erroneous, or omitted shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report, claim, tax return, statement or payment was deposited in the United States mail on or before the date for filing or paying.

Your first question is whether this particular statutory presumption applies to filings transmitted through privately operated delivery services as well as filings that are deposited in

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the United States mail. In the absence of anything indicating to the contrary, statutory language should be given its plain and ordinary meaning. When words in a statute are plain, direct and unambiguous, no interpretation is necessary to ascertain their meaning. *State v. Stein*, 241 Neb. 225, 486 N.W.2d 921 (1992). While the use of privately operated delivery services is becoming increasingly common, the statute in question refers only to the submission of evidence that the report or other document was deposited "in the United States mail." The principles of statutory construction do not allow reading a meaning into a statute that is not warranted by legislative language. *Kellogg Co. v. Herrington*, 216 Neb. 138, 343 N.W.2d 326 (1984). Since we have determined that § 49-1201 pertains only to filings transmitted through the United States mail, it is not necessary to answer your question as to which delivery services may be considered as the equivalent of transmission through the United States mail.

Your final question concerns the three enumerated clauses of § 49-1201. You ask whether the phrase "shall be deemed filed or made and received on the date it was mailed if the sender establishes by competent evidence that the report . . . was deposited in the United States mail on or before the date for filing" applies to all three clauses or only clause (3). The ordinary use of the word "or" in a statute is as a disjunctive that marks an alternative generally corresponding to "either". 82 C.J.S. *Statutes* § 335 (1953). Although "or" is not always used in the disjunctive, it is usually so considered and that is its commonly accepted meaning. *State ex rel. Finigan v. Norfolk Live Stock Sales Co., Inc.*, 178 Neb. 87, 132 N.W.2d 302 (1964). We conclude that the presumption of mailing set forth in § 49-1201 applies if any of the three circumstances enumerated therein occur.

Sincerely,

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Approved By:



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