

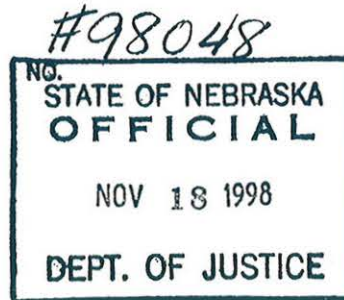


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DATE: November 16, 1998

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.

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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:

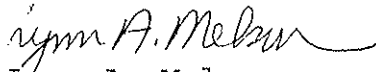
It is possible that the Legislature, in amending § 3-239 as part of the 1957 Cities Airport Authority Act, may have overlooked the significance of the new definition of "authority" as it relates to § 3-239. However, as stated by the Nebraska Supreme Court, "[I]t is presumed that the Legislature has full 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

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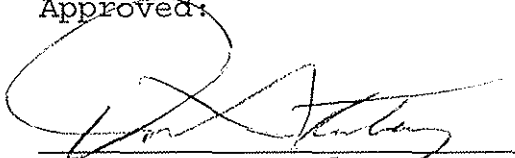
and, in particular, § 3-501(1), we must conclude that the Legislature intended the term "authority" as used in § 3-239 to refer only to city airport authorities. County airport authorities are, thus, not currently subject to the requirements of § 3-239.

Sincerely,

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Clerk of the Legislature

09-141-16

