

STATE OF NEBRASKA
STATE TREASURER



Don Stenberg
State Treasurer
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State Capitol, Suite 2005
Lincoln, NE 68509
402-471-2455

April 4, 2011

The Honorable Jon Bruning
Nebraska Attorney General
2115 State Capitol
Lincoln, NE 68509

RE: Money of the State and proper handling of funds under the State Law Enforcement Bargaining Council (SLEBC) Labor Contract

Dear General Bruning:

The questions presented in this letter arise from the State Auditor's report on State Law Enforcement Bargaining Council Employee Health and Dental Funds for the period of July 1, 2009, through June 30, 2010. The report is dated March 8, 2011.

Article 22, Section 22.1 of the labor contract between the State of Nebraska and the State Law Enforcement Bargaining Council (SLEBC) for the period July 1, 2009, through June 30, 2011 (the Contract), states as follows:

Effective July 1, 2009, through June 30, 2011, the State will contribute 79% of the cost of the SLEBC sponsored plan or the State PPO plan, whichever is less, for the option chosen by the SLEBC employee.

There does not appear to be any provision of that Contract that specifically says that these funds will be paid to SLEBC, or that they will be held by the State.

According to the Auditor's report, it has been the practice of the State since January 1, 2002 (under Treasurers Byrd, Ross and Osborn and Governors Johanns and Heineman and their respective DAS Directors) to periodically pay the funds provided for in Section 22.1 to SLEBC. SLEBC then manages the investment of the funds and the operation of the insurance plan for the covered employees.

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On the other hand, the Auditor states on page 18 of his report that:

[N]o one could identify who directed the transfer of State funds to SLEBC, or by what authority such transfer occurred and is still occurring. In addition to being unable to identify the party responsible for authorizing the ongoing conveyance of State funds to SLEBC, it appears no one from the State is monitoring the transfers or expenditure of these funds.

In response to this report, as State Treasurer I reached an agreement in principle with SLEBC (represented by Mr. David A. Domina) "that these funds would be placed in an account under the direction and control of the State Treasurer." Mr. Domina, representing SLEBC, is continuing to work with us to implement this agreement and has been very cooperative.

However, legal questions have arisen within state government concerning the State Treasurer's authority and the proper handling of these funds. Those questions are as follows.

Neb. Rev. Stat. § 84-602 (Reissue 2008) provides in relevant part as follows: "It shall be the duty of the State Treasurer: (1) To receive and keep all money of the state not expressly required to be received and kept by some other person...."

Are the funds held by SLEBC pursuant to the Contract "money of the State" which the State Treasurer has the duty to receive and keep?

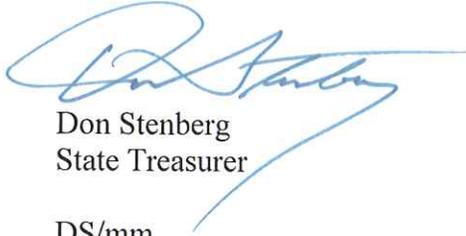
Second, this Contract and its predecessor agreements have apparently been uniformly interpreted to authorize and require the State to make payments to SLEBC for the health plan for the employees covered by the Contract since January 2002. On the other hand, according to the State Auditor, other than the ambiguous provision, Section 22.1 of the Contract, there is no other documentation authorizing these payments.

Therefore, should the State continue to make payments under the Contract as it has since January 1, 2002 (unless the Contract is amended or superseded by subsequent labor contracts with a different provision), or should the State discontinue payments to SLEBC and instead make payments directly from the Imprest Payroll Fund to SLEBC's benefit manager in response to proper documentation from the benefit manager?

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Since this is a matter of significant public interest, I respectfully request a formal Attorney General's opinion on these questions. Thank you for your assistance.

Yours truly,

A handwritten signature in blue ink, appearing to read "Don Stenberg", is written over the typed name and title.

Don Stenberg
State Treasurer

DS/mm

Cc: The Honorable Dave Heineman, Governor
Carlos Castillo Jr., DAS Director
The Honorable Mike Foley, State Auditor
David A. Domina, Counsel for SLEBC
News Media