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September 28, 2000

Rex Carpenter
Executive Director
Nebraska Rural Electric Association
800 South 13th Street
P.O. Box 82048
Lincoln, NE 68501

Re: Nebraska Rural TV

Dear Rex:

You have asked the following questions regarding Nebraska Rural TV:

Question 1. Does Nebraska Rural TV have the authority to loan money to a new entity formed by public power districts for rural economic development or to a presently exiting entity such as a local economic development organization?

Question 2. Does Nebraska Rural TV have authority to sell high speed broad band satellite services such as data transfer or interactive internet service at retail?

Question 3. Do public power districts have the authority under *Neb. Rev. Stat. § 70-625* to provide broad band communications services other than satellite TV programming, such as internet satellite service?

Question 4. Is it possible for Nebraska Rural TV to reorganize under the Joint Public Power Authority Act, *Neb. Rev. Stat. §§ 70-1401 to 70-1423*?

AUTHORITIES

A. Corporation. Nebraska Rural TV, Inc., is a Nebraska for-profit corporation organized under the Nebraska Business Corporation Act, *Neb. Rev. Stat §§ 21-2001 to 21-20,193*, and as such has the powers and authorities provided for in its Articles of Incorporation. The Third Article of its Articles of Incorporation state the purposes for which the corporation is organized, among which, is the authority "to engage in the business of providing satellite television signal descrambling or decoding devices, and satellite television programming and related services . . ." The corporation is also authorized by the Third Article to engage in

any lawful business. Thus, Nebraska Rural TV is not limited by its Articles of Incorporation to engage only in satellite TV descrambling or decoding and satellite television programming, but may also engage in any lawful business.

B. Bylaws. The organizers and shareholders of Nebraska Rural TV include four public power districts, which are public corporations and political subdivisions of the State of Nebraska organized pursuant to *Neb. Rev. Stat. §§ 70- 601 et seq.*, and the Nebraska Rural Electric Association, a Nebraska non-profit corporation. The Bylaws of the corporation limit the membership on the Board of Directors to “a director or manager of a rural electric system which is a member of the Nebraska Rural Electric Association or president or general manager of the Nebraska Rural Electric Association.” Bylaws, Article III, Section 4. The officers of the corporation are elected by the directors of the corporation. Bylaws, Article V, Section 1.

C. Public Power Districts. Public power district are authorized by § 70-625(2) to “sell, lease, and service satellite television signal descrambling or decoding devices, satellite television programming, and equipment and services associated with such devices and programming, except that this section does not authorize public power districts (a) to provide signal descrambling or decoding devices or satellite programming to any location (i) being furnished such devices or programming on April 24, 1987, or (ii) where community antenna television service is available from any person, firm, or corporation holding a franchise pursuant to sections 18-2201 to 18-2206 or a permit pursuant to sections 23-383 to 23-388 on April 24, 1987, or (b) to sell, service, or lease C-band satellite dish systems or repair parts.”

D. Investments by Public Power Districts. Public power districts are authorized by *Neb. Rev. Stat. § 77-2353 (7)* to invest or reinvest in “stocks, bonds, debentures, notes or other instruments or indebtedness issued by corporations having authority to sell, lease, and service satellite television signal descrambling or decoding devices and satellite television programming.” Since Nebraska Rural TV is a corporation having authority to sell, lease, and service satellite television signal descrambling or decoding devices and satellite television programming,” public power districts are authorized to invest in the stock of Nebraska Rural TV. *BW see*

X3, see 1 and 2 of 2
E. Joint Public Power Authority Act. The Joint Public Power Authority Act, *Neb. Rev. Stat. §§ 70-1401 to 70-1423*, authorizes public power districts which own electric distribution systems and distributions facilities to form a joint entity for the joint planning, financing, development, ownership, and operation of electric generation and transmission facilities and distribution facilities and the issuance of revenue bonds for the construction of generation and transmission facilities. *Neb. Rev. Stat. § 70-1403 (5)*.

Response to Question 1. A Corporation organized under the Nebraska Business Corporation Act has the power and authority to lend money. *Neb. Rev. Stat. § 21-2025(8)*. Nevertheless, because public power districts are restricted by Chapter 70, Article 6 of the Nebraska Statutes to certain activities among which is the sale, lease, and service of satellite TV signal descrambling or decoding devices, satellite TV programming, and equipment and services associated with such devices and programming, and are not authorized to loan money, it is questionable whether Nebraska Rural TV can engage in activities other than those authorized for public power districts. such as lending. The fact that Nebraska Rural TV is controlled by public power district directors and general managers raises the level of concern. If the investment by

the public power districts in Nebraska Rural TV was a passive investment and the corporation was not controlled by public power district directors and general managers the answer may be different. However, since Nebraska Rural TV is controlled by public power district directors and general managers, it is my opinion that Nebraska Rural TV may only engage in activities that are statutorily authorized for public power districts.

A public power district's operations are subject to the limitations expressed in its charter. See, Schroll v. City of Beatrice, 169 Neb. 162, 98 N.W.2d 790 (1959). Also, a public power district's operations are subject to the limitations in the law under which it was created. See, United Community Services v. Omaha National Bank, 162 Neb. 786, 77 N.W.2d 576 (1956); Chase v. County of Douglas, 195 Neb. 838, 241 N.W.2d 334 (1976). Stated another way, a public power district cannot do indirectly what it cannot do directly. This principle supports the rationale that notwithstanding the fact the Nebraska Rural TV is a private corporation, it is still restricted to activities authorized for public power districts. Therefore, it is my opinion, primarily because of the control that the four public power districts exercises over Nebraska Rural TV, that it cannot engage in any activities that public power districts are not authorized to engage in.

With respect to economic development, *Neb. Rev. Stat. § 70-625 (3)* authorizes public power districts, "in rural areas of the district, the board of directors of such district may provide technical and management assistance to prospective, new, or expanding businesses, including home based businesses, provide assistance to a local or regional industrial or economic development corporation or foundation located within or contiguous to the district's service area, and provide youth and adult community leadership training." The statute only authorizes "technical and management assistance" to the businesses themselves, and "assistance" to an economic development corporation or foundation. It is not clear to me what the word "assistance" means in the above quoted sentence. Since the legislature did not modify the word "assistance" with the terms "management and technical," like it did with respect to "prospective, new, or expanding businesses . . ." it must have meant something different. Although the word "assistance" appears to be broader than "management and technical assistance," it is not clear whether that term is broad enough to include financial assistance. Webster's New World Dictionary (3rd ed. 1988, p.83) defines "assistance" as "the act of assisting, or the help given; aid." It would appear that financial assistance is consistent with "the act of assisting, or the help given; aid." Nevertheless, it is not clear to me that financial assistance is included. I have looked at parts of the legislative history supplied by your office, and it provides little if any help. I therefore cannot say with confidence that the term "assistance" either includes or excludes financial assistance.

Response to Question 2. Although there is no restriction under the Nebraska Business Corporation Act on Nebraska Rural TV offering high speed broad band satellite services such as data transfer or interactive internet services at retail, the same rationale applied to the Response to Question 1, applies here. Nebraska Rural TV is only authorized to engage in same activities as public power districts, i.e., the sale, lease and serve of satellite TV descrambling and decoding devices, satellite TV programming and equipment and services associated with such devices and programming. Thus, it is my opinion that Nebraska Rural TV cannot offer satellite internet services.

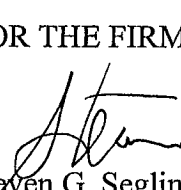
Response to Question 3. It is my opinion that public power districts do not have the authority to provide broad band communications services, such as satellite internet services. *Neb. Rev. Stat. § 70-625(2)* authorizes public power districts to “sell, lease, and service satellite television signal descrambling or decoding devices, satellite television programming, and equipment and services associated with such devices and programming . . .” The authorization under the statute is limited to satellite TV and equipment and services associated with satellite TV. Even though internet service may technically be provided over the same satellite equipment, it is a service different from TV, and therefore beyond the scope of the authorization in the statute.

Response to Question 4. I do not believe that Nebraska Rural TV can reorganize under the Joint Power Authority Act, since the Act authorizes the formation of a joint entity for the joint planning, financing, development, ownership, and operation of electric generation and transmission facilities and distribution facilities and the issuance of revenue bonds for the construction of generation and transmission facilities. *Neb. Rev. Stat. § 70-1403 (5)*. It does not authorize formation for the sale of satellite descrambling or decoding devices or programming.

If you have any further questions or comments please advise.

Sincerely,

FOR THE FIRM


Steven G. Seglin

SGS:rrk