

## NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

Charlie Janssen  
State Auditor

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October 31, 2017

Mayor Chris Beutler  
City of Lincoln  
555 South 10th St., Suite 301  
Lincoln, NE 68508

Dear Mayor Beutler:

Since the beginning of this month, we have engaged, both personally and through our respective staff, in an ongoing dialogue regarding the City of Lincoln's 2012-2014 biennial budget. The issue over which we find ourselves in continued deliberation is whether the City had achieved the affirmation of at least 75% of its governing body, which is required to utilize the additional 1% budget lid authority under Neb. Rev. Stat. § 13-519(2) (Cum. Supp. 2016).

As I have stated publicly in no uncertain terms, that the present concern is, at worst, the result of an honest difference of opinion regarding the proper interpretation and application of the operative language in § 13-519(2). There is absolutely no basis for presuming anything to the contrary.

I understand also that the 1% budget lid authority taken had no appreciable impact upon the City's subsequent tax levy, as ample unused budget authority was available for the levies that were set.

Regardless, as we have discussed, the wisest course of action in going forward would be to seek formal legal guidance from the Nebraska Attorney General regarding the language at issue in § 13-519(2). Consequently, I have sent the enclosed opinion request, asking whether the phrase "seventy-five percent of the governing body," as used in that statute, refers to the specified percentage of either the entire elected body or only those members present for the required vote.

Should the Attorney General opine that § 13-519(2) requires a supermajority of the entire elected body, the only remaining question is whether the City of Lincoln should revise its current budget accordingly. The Auditor of Public Accounts lacks any authority, statutory or otherwise, to dictate action regarding a prior year's budget. There is, however, a voluntary option for you to consider; reducing the increase of the 2017-2018 budget year restricted funds authority. Please see the attached analysis for specific details.

I appreciate the opportunity that we have had to discuss this matter in a professional and amicable fashion and would be happy to visit with you further about it, or any other concern, at your convenience.

Sincerely,

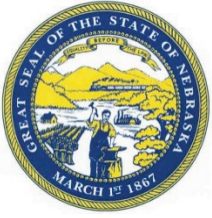
A handwritten signature in cursive script, appearing to read "C. J. Janssen".

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Enclosures

**Analysis of City of Lincoln Lid**

	<b>2012-2013 Budget</b>	<b>2013-2014 Budget</b>	<b>Extra Increase</b>	
Prior Authority	111,130,054.50	115,019,606.41		
1% of Prior Authority	1,111,300.55	1,150,196.06	2,261,496.61	
2.5% of the Prior Authority Increase		27,782.51	27,782.51	
<b>Total Extra Increase to Authority as of 2013-2014 budget</b>			<b>2,289,279.12</b>	
2.5% Increase on the Extra Authority		2014-2015	57,231.98	(2,290,279.12*.025)
		2015-2016	58,662.78	(2,290,279.12+57,231.98*.025)
		2016-2017	60,129.35	(2,290,279.12+57,231.98+58662.78*.025)
		2017-2018	61,632.58	(2,290,279.12+57,231.98+58662.78+60129.35*.025)
<b>Total Extra Increase to Authority based on the 1% Vote (1)</b>			<b>2,526,935.81</b>	
<i>Note: The City had Unusuad Authority that was greater than the Extra Authority; therefore, the City would still be in compliance with the lid, even without the extra authority.</i>				
<b>If City chose to Adjust current budget for 1% extra increases.</b>				
Prior Restricted Funds Authority per 2017-2018 Budget (From 2016-2017 City Budget)			128,198,759.58	
City took allowable 2.5% base increase to Authority			2.50%	
Increase to City Authority for 2017-2018, as already submitted.			3,204,968.99	
Reduction of Total Extra Increase to Authority - From Above (1)			(2,526,935.81)	
Projected remaining Increase to Authority for 2017-2018			678,033.18	
<b>Projected Restricted Funds to be carried forward to next budget, if City chose to adjust current budget would be:</b>			<b>128,876,792.76</b>	(128,198,759.58+678033.18)
<i>The Extra Increase to Authority is less than the amount of increase in Authority the City added in the 2017-2018 budget; therefore, the City could reduce the increase taken in the 2017-2018 budget by the amount of Extra Increase to Authority that has been carried forward.</i>				
Note: The City of Lincoln took an additional 1% increase to its restricted funds authority during the budget years of 2012-2013 to 2013-2014. The additional 1% was not taken after the 2013-2014 fiscal year budget, so total additional increase each year would be 2.5% of the incorrect authority carried forward. The increase was shown on the form because a majority of the council attending the meeting approved the 1% increase, but not 75% of the entire council.				



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October 31, 2017

The Honorable Doug Peterson  
Attorney General of Nebraska  
2115 State Capitol  
Lincoln, NE 68509

RE: Opinion Request

Dear Mr. Attorney General:

The purpose of this letter is to request from you, pursuant to Neb. Rev. Stat. § 84-205(4) (Reissue 2014), a formal legal opinion regarding the proper interpretation of language found in Neb. Rev. Stat. § 13-519(2) (Cum. Supp. 2016), which states the following:

*A governmental unit may exceed the limit provided in subdivision (1)(a) of this section for a fiscal year by up to an additional one percent upon the affirmative vote of at least seventy-five percent of the governing body.*

(Emphasis added.) Specifically, we wish to know whether the phrase “seventy-five percent of the governing body,” as highlighted above, refers to the specified percentage of either the entire elected body or only those members present for the required vote.

Based upon a verbal directive received a few years ago from Dale Comer, one of your predecessor’s staff members, this office has since taken the position that seventy-five percent of all the governmental unit’s members – not merely those present – must vote affirmatively in order to approve the additional one percent budget increase. Because local ordinance and charter provisions may also be applicable, however, our accustomed understanding of § 13-519(2) has recently been questioned, giving rise to the need for your formal legal guidance in this matter.

As you know, Neb. Rev. Stat. § 13-522 (Reissue 2012) authorizes the Auditor of Public Accounts to receive and review a governmental unit’s budget documents, notifying both the governing body and the State Treasurer of noncompliance with statutory budget limits. In order to fulfill that responsibility, it is essential for this office to have a correct understanding of the statutory language at issue. Thus, your assistance in resolving the present uncertainty is greatly appreciated.

Please do not hesitate to contact me at your convenience should you have any questions or concerns regarding this request.

Sincerely,

A handwritten signature in cursive script that reads "C. J. Janssen".

Charlie Janssen  
State Auditor