

Utilities Section Newsletter

League of Nebraska Municipalities

March 2011

Municipalities may be liable for failure to train employees

By William A. Harding and Kelly M. Ekeler
HARDING & SHULTZ, P.C., L.L.O.
Lincoln, Nebraska

In a landmark decision, the U.S. Supreme Court held that a municipality may be held liable when its failure to train employees results in a violation of the Constitution. See *City of Canton v. Harris*, 498 U.S. 378 (1989). Specifically, the *Canton* Court held that a municipality may be liable for inadequate training under 42 U.S.C. § 1983, which prohibits municipalities from depriving a citizen of constitutionally protected rights.

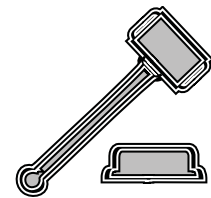
In *Canton*, Geraldine Harris was arrested by officers of the City of Canton Police Department. After being arrested, Harris repeatedly slumped over and when asked whether she needed medical assistance, she responded incoherently. After Harris was released from police custody, she was taken to

a hospital by her family and was diagnosed as suffering from severe emotional ailments. Harris filed a lawsuit against the City under § 1983, seeking to hold the city liable for its violation of her right to receive necessary medical attention while in police custody and for failure to train police officers regarding medical emergencies.

The *Canton* Court held that inadequate police training could serve as a basis for municipal liability under § 1983, but only when the failure to train amounted to “deliberate indifference” to the rights of persons with whom the police came in contact. The Court said the plaintiff alleging the violation must prove that a deficiency in training actually caused the police

officer’s violation of a constitutionally protected right. The appropriate test is whether the injury to the plaintiff could have been avoided if the officer had been trained pursuant to a program that was not deficient in the respect claimed by the plaintiff.

The record in *Canton* indicated that the city did train its officers and its training covered medical emergencies. The Court stated that in resolving the issue of the city’s liability, the focus must be on adequacy of the training program in relation to the tasks officers must perform. The fact that a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the city. For liability to attach, the identified deficiency in the city’s training program must be closely related to the ultimate injury. Thus, the



plaintiff must prove the deficiency in training actually caused the police officer’s indifference to the needs of the injured party.

Several appellate court decisions have added context to the *Canton* holding that municipalities can be liable under § 1983 for failure to train employees. The Supreme Court emphasized that an “inadequate training” claim can be the basis for § 1983 liability only in “limited circumstances.” *Bd. of Co. Commrs. v. Brown*, 520 U.S. 397 (1997). Various circuit court decisions have reiterated *Canton’s* message that municipalities may be liable for failure to train only when the failure

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UTILITIES SECTION

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reflects “deliberate indifference” to constitutional rights. *See e.g. Jeffes v. Barnes*, 208 F.3d 49 (2d Cir. 2000). Municipalities may be liable for failure to train their employees only when the failure reflects a deliberate or conscious choice or policy of the city. *See e.g. Reitz v. County of Bucks*, 125 F.3d 139 (3d Cir. 1997).

The Eighth Circuit, which has jurisdiction over Nebraska, held that a county was not liable for failure to train an officer when it had no notice that its training procedures were inadequate and likely to result in a violation of constitutional rights. *Anderson v. Franklin Co.*, 192 F.3d 1126

(8th Cir. 1999); *see also Swain v. Spinney*, 117 F.3d 1 (1st Cir. 1997) (city not liable for failure to train an officer with respect to a strip search where there were no previous incidents to put the city on notice of any deficiency in training). The *Anderson* court concluded that the county did not deprive the plaintiff of his constitutional rights when an officer mistakenly arrested the plaintiff, where there was no evidence the county had notice that its training was inadequate. Other Courts have addressed similarly narrow factual issues. *See e.g. Allen v. Muskogee, Oklahoma*, 119 F.3d 837 (10th Cir. 1997) (issue of fact existed as to whether officers used

excessive force in killing suspect where evidence indicated officers were inadequately trained in leaving cover and approaching armed and suicidal persons); *Popham v. City of Talladega*, 908 F.2d 1561 (11th Cir. 1990) (holding that a city’s failure to train jail personnel to screen detainees for suicidal tendencies was insufficient to impose liability on the city).

As a result of these cases, municipalities should recognize that training programs provided to their employees may result in liability if employees participating in the programs are not adequately trained. A municipality will only be liable if the inadequate train-

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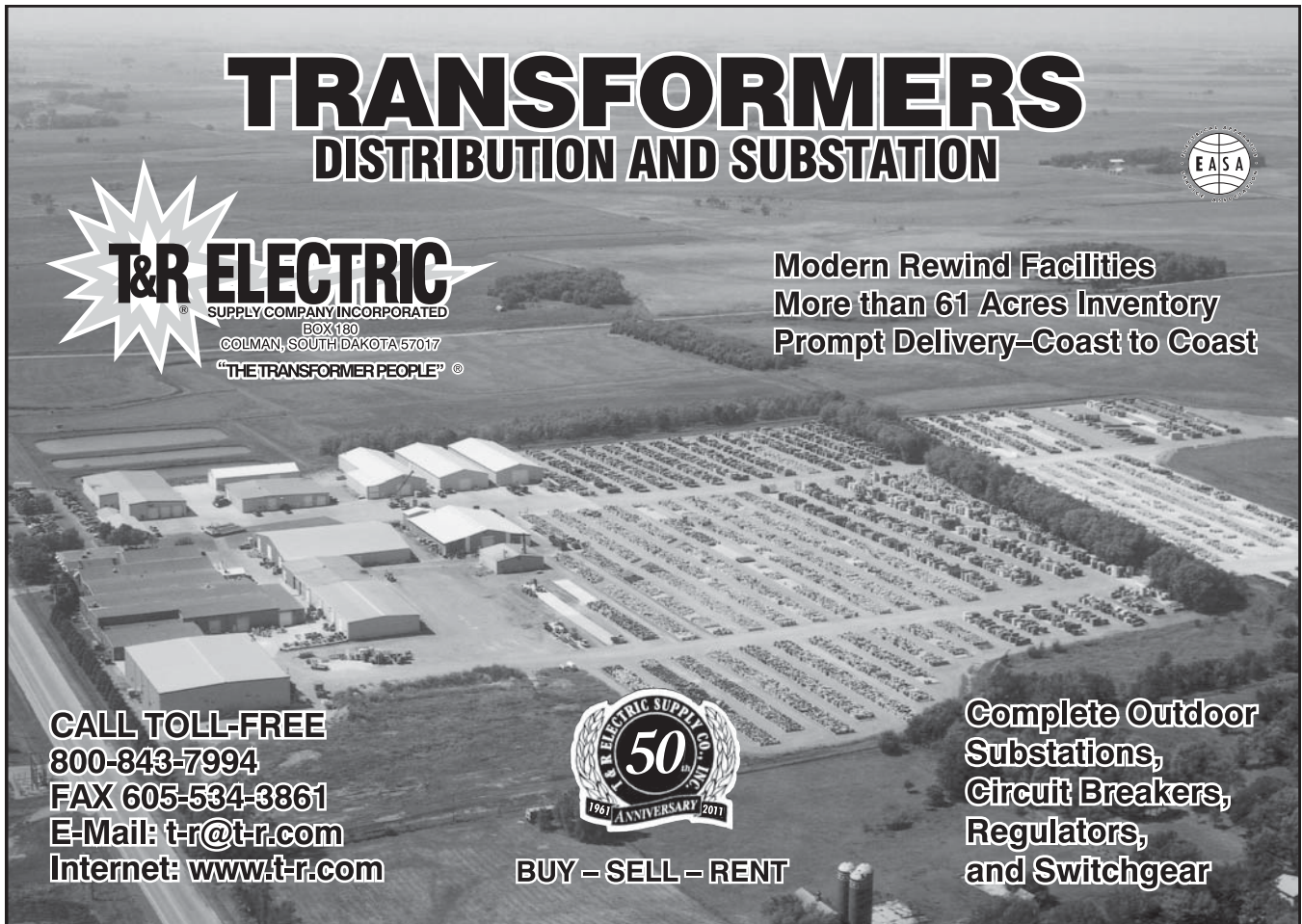
Municipalities may be liable for failure to train employees

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ing constitutes the municipality's policy or regular practice, and is not an isolated occurrence. If a municipality has notice that its inadequate training is likely to result in the violation of constitutional rights, the municipality will be liable to a person whose constitutional rights are violated.

Editor's Note: This article is

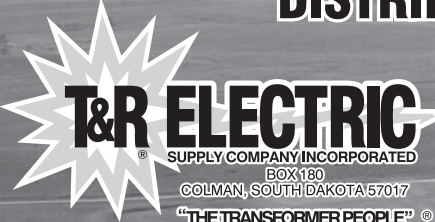

not intended to provide legal advice to our readers. Rather, this article is intended to alert our readers to new and developing issues and to provide some common sense answers to complex legal questions. Readers are urged to consult their own legal counsel or the author of this article if the reader wishes to obtain a specific legal opinion regarding

how these legal standards may apply to their particular circumstances. The authors of this article, William A. Harding and Kelly M. Ekeler, can be contacted at 402/434-3000, or at Harding & Shultz, P.C., L.L.O., P.O. Box 82028, Lincoln, NE 68501-2028, or wharding@hslegalfirm.com or kekeler@hslegalfirm.com.




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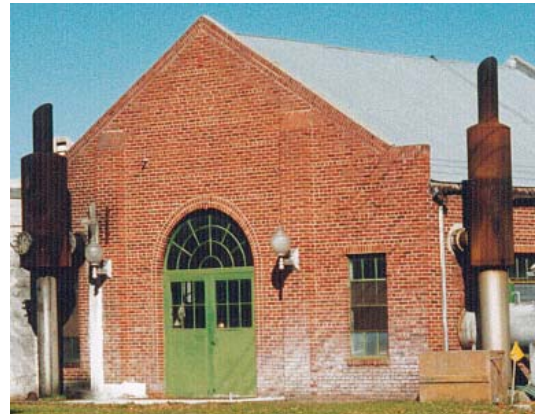
Nebraska utilities history

The Utilities Section Newsletter will continue to feature histories of both utilities and associate members. Any historical data and/or photos of your utilities, a specific facility, or articles already written are welcome, along with permission to print. If you have questions, contact Rob at 402-476-2829 or robp@lonm.org.

By Rob Pierce,
Utilities Field Representative,
LNM

Ansley, located in Custer County, was surveyed and platted in 1886. The community was named after Eliza Ainsley (pronounced Ansley), a cousin of Gen. George Armstrong Custer. On April 20, 1886, a post office was established and by May the town consisted of a tent and a wagon load of lumber. A drug store, harness shop and lumberyard were soon established along with a hotel by August and the railroad arrived in the fall. Some businesses were moved from Westerville to the new town site. By the mid 1880s, a school opened and on Jan. 13, 1887, Ansley was incorporated as a village. That same year, a livery was established and the Ansley Banking Company opened in 1888. By 1890, the population had increased to 400, a flour mill was

moved from Algeron to Ansley and the two-story frame school had added high school grades. In 1891, businesses included a Methodist church, a wagon maker, hardware store, general store, meat market, livery, restaurant, laundry, millinery, grocery store, billiard hall, a Commercial Hotel, a Shepherd House, lumberyard, grain warehouse, and a railroad station. Also in 1891 the *Chronicle* newspaper began publishing and a daily stage ran from Arcadia to Ansley. In 1892, \$4,000 in bonds were voted on and issued as Ansley became one of the first Nebraska towns west of Grand Island to own a power plant and water system. On Sept. 20, 1892, the village approved a franchise to C.J. Stevens to build and operate a



Ansley Power Plant, 2001 Photo.

power plant. The Ansley Electric Light & Power Company was thus incorporated. In 1893, the public water system was organized and the plant completed. Also that year, the wastewater system was organized and installed. By 1894, the *Advocate* newspaper was in operation, and the first high school seniors graduated. A fire department was organized in 1894.

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Nebraska utilities history

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By 1900, the population was 468, the *Citizen* newspaper was started and businesses included several banks, multiple mercantile stores, a mill, grain elevator, meat market, livery, hotel, lumberyard, coal yard, and a drug store. In 1902, the Central Telephone Company was established, a hardware store was operating and the *Citizen* and *Chronicle* newspapers combined, forming the *Chronicle-Citizen* newspaper. In

1904, a windmill with a gas engine was located on top of the hill (east edge of town) along with a 90,000-gallon water storage tank. That fall, fire destroyed the light plant and citizens discussed whether to move the plant to Ravenna. That idea was dropped and the plant was later overhauled to provide electricity to the town again. In 1905, the Farmer's State Bank was organized and the *Westerville Argosy* newspaper was purchased and moved to

Ansley.

In 1907, the *Nebraskan* newspaper was started, but was discontinued after only a few issues. In 1909, the Ansley Telephone Company purchased the Central Telephone Company and the Farmer's Grain and Livestock Shipping Association was organized. Ansley also was touted as the smallest town in the world to receive a Rotary Club Chapter. On Oct. 1, 1906, Peter W. McTaggart

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Nebraska utilities history

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& Company succeeded the Electric Light & Power Company, but this plant was also destroyed by fire on April 13, 1910. The council issued bonds of \$8,000 to extend the water system and also approved a municipal light and power system. On June 6, 1910 the Peter W. McTaggart & Company plant was succeeded by the Ansley Municipal Light & Power system, completed at a cost of about \$21,000. The plant was completed in 1911, but a flood in 1912 demolished the powerhouse after the dam broke. Plant operator Herman Alberta had the electricity restored by December of that year. In May 1914, a vote for bonds to extend the electric lighting system carried on a 122-24 vote. On July 11, 1914, fire destroyed the Argosy newspaper building. In 1915, the Broken Bow *Beacon* newspaper was purchased and moved to Ansley, becoming the *Ansley Herald*. Also this year, the Security State Bank was organized and a new power plant building was erected with a well and operated on a water wheel. In 1916, the Wom-

en's Federated Club organized a library.

In the 1920s, the population was 755 and by 1928, the water rates were \$1.10 per month and electric rates were \$0.08 to \$0.20 per kilowatt hour (KWH). In 1931 water mains were installed and the well in the power plant, which operated on the water wheel was supplemented with another electric pump. In 1934, Ansley became a member of the League of Nebraska Municipalities. In 1935, the dam at the park was washed away and was replaced with an earthen dam. In 1936, a gym was added to the 1910 school and the municipal power plant had a 289 kilowatt (KW) capacity via the internal combustion engines at the plant. In 1938, a new six-inch well and well house was installed with a rating of 250 gallons per minute (gpm) output. The well includes a turbine pump and a 15 horsepower (HP) electric motor.

In the 1940s, the old cylinder pump in the light plant was replaced with a four-inch 160 gpm turbine pump. A new wastewater system and treatment plant was

installed at a cost of \$87,700. In 1953, the power plant engines operated on petroleum with a generator nameplate rating of 0.2 megawatts. In 1956, the electrical distribution system and the 310 meters in service were owned by the city and current was supplied by Custer Public Power District. Meter deposits were \$5 and the cost of street lighting averaged \$170 per month.

1956 Electric Rates:

Residential-First 25 KWH @ \$2, next 25 KWH @ \$0.04, next 25 KWH @ \$0.03, next 100 KWH @ \$0.025, over 200 KWH @ \$0.02. Business-First 20 KWH @ \$2, next 30 KWH @ \$0.06, next 30 KWH @ \$0.05, next 100 KWH @ \$0.04, next 300 KWH @ \$0.02, all over 500 KWH @ \$0.02.

Water rates in 1956 were first six months = \$1, next six months @ \$1.50. The village operated three wells by 1958 with rate charges of \$2 per month for water. Cost of electrical current for pumping water was \$200 per year.

The city's natural gas system

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 was operated and supplied by Kansas-Nebraska Natural Gas Company at this time. The city auditorium was maintained from a mill levy, in 1962 amounted to about \$600. Water rates in 1962 were \$2 per user and wastewater rates were also \$2 per user. In 1962, the power plant sold the 240-hp Fairbanks-Morse diesel engine replacing the engine with a 0.6 megawatt unit, In 1969, another engine was put into service that had a nameplate rating of 0.9 megawatts, the last two units installed operate on oil/natural gas. In 1969 the water system

installed a new six-inch well near the school with a six turbine pump rated at 325 gpm.

In 1984, a new wastewater treatment facility was installed which is an activated sludge, extended aeration system designed for 0.045 million gallons per day (mgd) with aerobic digester sludge treatment. This system was later upgraded in 1994. Also in 1994, the city began installing water meters. In 1995, the city received an \$86,600 grant for a street project with a total cost of \$162,500. The city had 335 electrical customers with the system owned by the city and supplied

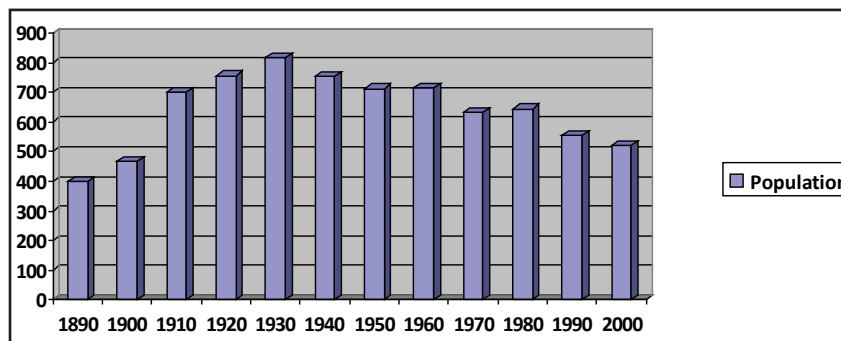
by Custer Public Power District, WAPA and MEAN. The two Fairbanks-Morse units installed at the electric generation plant in 1968 and 1972 had a rated capacity of 1.24 megawatts.

By the year 2000, the population was 520, the volunteer fire department had an ISO rating of 7 and 9, the natural gas service was provided by Kinder Morgan and ACE, and the power plant had a rating of 1.50 megawatts.

Today, the natural gas is provided by SourceGas (since 2009), the city has two parks, swimming pool, community center, new fire hall building, library, municipal water, wastewater, electric systems, standby power generation plant and most streets are hard surfaced with curbing. Ansley has been an incorporated village for 124 years and a longtime member of the Utilities Section.

References: Nebraska Directory of Municipal Officials, 1965-2010; Nebraska Municipal Review Magazine, 1928, 1950, 1995; Water Resources of Nebraska, December 1936; History

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Public power systems recognized

The American Public Power Association (APPA) recognized 104 public power systems that earned Safety Awards of Excellence for safe work practices. The electric department at Crete tied for first place with a zero incidence rate and 30,260 worker hours. Crete was in Group C for systems with 30,000 to 59,999 worker-hours of exposure. The Nebraska Public Power District placed second with an incidence rate of 1.45 with 4,417,453 worker hours. They were in Group H for systems with more than 4,000,000 worker-

hours of exposure. The awards were presented at the March 21 Annual Engineering and Operations Technical Conference held in Nashville, Tennessee. Award criteria and a full list of award winners can be found on APPA's

website www.publicpower.org. Congratulations to the Crete Electric Department and Nebraska Public Power District for their commitment to safety and earning the APPA Safety Award of Excellence recognition.

If your municipal system or employees receive recognition, promotions, awards, etc., contact the League office so we can recognize them in our publications.

2011 Winter/Spring Water Workshops held

The spring Water Workshops sites included Seward, Blair, Geneva Beatrice, Gering, Ogallala, McCook and Stuart. The workshops were well attended and participants received 5 hours toward their grade 1-4 water license and 3.5 hours toward wastewater certification. These workshops were cosponsored by the Utilities Section and the Nebraska Section-American Water Works Association. Topics at these workshops included operating a water system (techni-

cal, managerial, financial capacities), working with contracted labor, equipment and services and current water and regulatory issues. These workshops were eligible for grant reimbursement provided the operators/facilities were eligible for the program. We turned in the class cost to DHHS, but the individuals/systems must turn in their respective mileage (odometer readings) in order to be reimbursed. *Reminder: the current mileage reimbursement is \$0.51 per mile.*

Upcoming Water Operator Workshop sites are as follows:

July 6 – Lexington, Service Center
July 7 – North Platte
Oct. 4 – St. Paul, Fire Hall
Oct. 5 – David City
Oct. 6 – Norfolk
Nov. 29 – Bridgeport
Dec. 13 – South Sioux City
Dec. 14 – Fremont
Dec. 15 – Lincoln

A reminder for all operators to get their required training hours met before the end of the year, because all water licenses will become due then. Also, the reimbursement grant will end on Dec. 31, 2011, so if you are eligible and have been using this option, be sure to get your paperwork to DHHS before the deadline to ensure reimbursement.

After 2011, all water operators (grades 1-4 & 6) will be on a two-year renewal rotation and will need 10 hours of recertification training hours for that time period.

Nebraska utilities history

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of Custer County, 1919; Department of Energy Website, 2004; Kearney Hub Newspaper, 2004; Nebraska Our Towns...Central North Central, 1989; Perkey's Nebraska Place Names, 1995; Nebraska Place Names, 1960;

Pages of History, Nebraska High Schools 1854-1994; Maps Tell A Story, 1991; NEDED Website, 2005; Custer County Chief Newspaper, 1914; and the Nebraska Historical Building Survey, Custer County, July 2006.

Outstanding water operators recognized

At the 2011 Rural Water Association Annual Spring Conference, Jack Cordes of Scribner and Robert “Bob” Curry of Tecumseh received “Outstanding Water Operator Award” plaques from Doug Woodbeck, DHHS DPH Field Services and Training Supervisor.

Jack has been with the city of Scribner since 1992 and was promoted to Utility Superintendent

in 1999. Jack holds a Grade II water license and is described as intensely dedicated to his job and serving the city of Scribner, where he also grew up.

Bob, a lifelong resident of the rural Tecumseh area, has been with the Rural Water District since it was formed in 1973 as a construction inspector. After the project completion, he stayed on

CHEERS!

as manager. Bob holds a Grade 4 water operator license and has served the district for 38 years.

Again, congratulations to Jack Cordes and Bob Curry!

ATV Workshops to be scheduled

Two ATV Workshops will be scheduled in 2011. If your system uses this type of vehicle and is interested in hosting and/or participating at one of these workshops, contact Rob (email robp@lonm.org, office 402-476-2829). Sites will be determined by interest and access to ATV and multi-use vehicles for the driving portion of the class. If your municipality has not filled out an ATV survey, one can be accessed on the League website or contact Rob to have one sent.

\$1.2 million in CDBG to Chambers, Clarks, Hayes Center, Wolbach

The Nebraska Department of Economic Development (DED) in December awarded \$1.2 million in Community Development Block Grants (CDBG) to Chambers, Clarks, Hayes Center, and Wolbach. The grant funding will be used

to build or renovate their water and wastewater system. For more information, check the DED website at www.neded.org, also the January issue of the *Nebraska Municipal Review* has an article on grant funding.



Photos: Tam Kessler, Scott Doherty



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Training calendar for 2011

May

May 24-26.....Rubber Gloving School..... Northeast Community College, Norfolk

June

June 1-2.....Electric Underground School..... Northeast Community College, Norfolk

June 15-17.....Municipal Accounting & Finance Conference Ramada Inn, Kearney

July

July 6.....Water Operator Training Workshop Lexington

July 7.....Water Operator Training Workshop North Platte

Workshops also are listed on our website at www.lonm.org "Calendar of Events."

Water and Wastewater Operator License Classes and Test Dates

If you need to get a **Water Operator** licensed, the list of classes and test dates can be found at the following website: <http://www.dhhs.ne.gov/enh/WaterSpout.pdf>. Also, the application forms can be found at this website: <http://www.dhhs.ne.gov/enh/OpExamTrngApp.rtf>.

If you need to get a **Wastewater Operator** licensed, the list of test dates can be found at the following website: <http://www.deq.state.ne.us/WasteWat.nsf/Pages/Train05>.

League puts classified ads on website

Besides the classified column offered in the *Utilities Section Newsletter* and the *Nebraska Municipal Review*, the League of Nebraska Municipalities is posting classified ads on its website. This service, which is part of the League's redesign of its website, is provided free of charge to member cities and villages while others will pay 55 cents per word. Ads are removed 30 days after the posting date unless otherwise specified. For more information, contact Brenda Emmett at brendae@lonm.org or Matt Mittan at mattm@lonm.org.

Be sure to check out the League's website at www.lonm.org. Matt Mittan, the League's Information Technology Manager, is adding new features and making frequent content and design changes.

