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STATE OF NEBRASKA
OFFICIAL
OCT 27 1993
DEPT. OF JUSTICE

DATE: October 22, 1993

SUBJECT: If an official of the executive branch of state government who, in the discharge of his or her official duties, is required to take action or make a decision that may cause financial benefit or detriment to a business with which he or she is associated and which is under contract with the same executive branch of state government, what actions are required.

REQUESTED BY: Senator Dan Lynch
Nebraska Legislature

WRITTEN BY: Don Stenberg, Attorney General
Harold Mosher, Senior Assistant Attorney General

You have provided this office with a rough draft of a proposed legislative bill which, if enacted into operative law, would adopt the Comprehensive Rehabilitation and Assistive Technology Act (hereinafter, the "Act"). We note that section 3 of the Act creates a Comprehensive and Assistive Technology Advisory Committee comprised of fifteen members to provide, in an advisory capacity, technical assistance and support to the Division of Rehabilitation Services of the State Department of Education in the development and implementation of the Act.

Part (3) of section 3 of the Act provides that one of the members of the above described committee shall be:

> a director or administrator of a consumer controlled corporation qualifying under section 501(c)(3) of the

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> Internal Revenue Code of 1986, as amended, which corporation has been in existence for at least five years, is an advocate for brain and head injured persons exclusively, and whose membership consists primarily of individuals with disabilities whose primary disability results from brain or head injuries,".

Part (3) of section 7 of the Act provides:

> The Division of Rehabilitation Services of the State Department of Education shall contract with a consumer-controlled private corporation qualifying under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that has been in existence for at least five years, which is exclusively an advocate for individuals with disabilities whose primary disability results from brain or head injuries, and whose membership consists primarily of such individuals to carry out the provisions of this section. (Emphasis added).

First, a bit of housekeeping. It appears that the language underscored above in part (3) of section 3 and part (3) of section 7 of the Act should be deleted or redrafted inasmuch as the language underscored is ambiguous when considered with the whole. For the purpose of this response, we assume the language underscored in the two sections will be deleted.

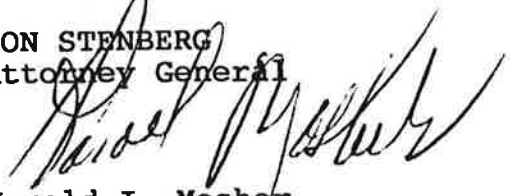
It is to be noted at the outset that the Division of Rehabilitation Services of the State Department of Education is a public body and its business must be conducted in compliance with the provisions of the Nebraska Public Meetings Law. Those provisions require open public meetings, advance public notice of the time and place of the meetings, and an agenda for the meetings. In addition, all contracts entered into by the Division of Rehabilitation Services of the State Department of Education must be kept on file in its office and are subject to public inspection pursuant to the provisions of Neb. Rev. Stat. §§ 84-712 and 84-712.01 (Reissue 1987).

It is also to be noted that a member of the Comprehensive and Assistive Technology Advisory Committee is an official of the executive branch of state government. Therefore, if in the discharge of his or her official duties the member is required to take any action or make any decision that may cause financial benefit or detriment to him or her or a business with which he or she is associated and which is under contract with the Division of Rehabilitation Services of the State Department of Education pursuant to part (3) of section 7 of the Act, which is distinguishable from the effects of such action on the public

generally, or a broad segment of the public, the member must take action as described in Neb. Rev. Stat. § 49-1499 (Cum.Supp. 1992) as soon as he or she is aware of such potential conflict, or should reasonably be aware of such potential conflict, whichever is sooner.

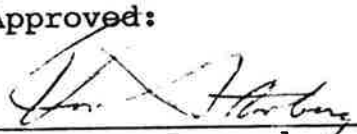
Respectfully submitted,

DON STENBERG
Attorney General



Harold I. Mosher
Senior Assistant Attorney General

Approved:



Attorney General

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