STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

#00043

NO.
STATE OF NEBRASKA
OFFICIAL
DEC 19 2000
DEPT. OF JUSTICE

DATE: December 15, 2000

SUBJECT: Whether an individual who is a member of the State Board of Education can also be a member of the Omaha City Council.

REQUESTED BY: Kathryn Piller
Member, State Board of Education

WRITTEN BY: Don Stenberg, Attorney General
Charlotte R. Koranda, Assistant Attorney General

You have requested our opinion on whether you, as a member of the State Board of Education, can also run for and be elected to the Omaha City Council. We did not find any laws which prevent you from being a member of the State Board of Education and a candidate for or member of the Omaha City Council. Our conclusion is based upon the following analysis.

Omaha is classified as a city of the metropolitan class. "All cities in this state which have attained a population of three hundred thousand inhabitants or more shall be cities of the metropolitan class and governed by this act." Neb. Rev. Stat. § 14-101 (1997). Omaha is governed by a home rule charter, adopted on July 18, 1922 pursuant to Neb. Const. art. XI, §§ 2-5. *Carlberg v. Metcalf*, 120 Neb. 481, 234 N.W. 87 (1930). "The council members of a city of the metropolitan class which adopts a home rule charter shall meet the qualifications found in section 14-204 and 14-230." Neb. Rev. Stat. § 32-537 (1998).

The qualifications for city council are set forth in § 14-204. These qualifications do

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not contain a prohibition against holding a state office.

> (1) A candidate for council member of a city of the metropolitan class shall be a registered voter and a resident of the district from which he or she seeks election and shall have been a resident in the city and district or any area annexed by the city for one year. The primary election for nomination of council members shall be held on the first Tuesday of April preceding the date of the general city election.
>
> (2) Any person desiring to become a candidate for council member shall file a candidate filing form pursuant to sections 32-606 and 32-607.

Neb. Rev. Stat. § 14-204 (1997).

Additional qualifications are specified in § 14-230 which explicitly states that candidate for or members of the city council may hold other public office.

> The Legislature, recognizing the importance to the entire State of Nebraska of sound and stable government in cities of the metropolitan class, hereby declares that the qualifications for candidacy for the office of mayor and council member of such cities, whether any such city is governed by a home rule charter or not, are matters of general statewide concern. The provisions of any ordinance or home rule charter of any such city to the contrary notwithstanding, no person shall be disqualified from candidacy for the office of mayor or council member of any such city because of the fact that such person holds any other public office, either elective or appointive except any office subordinate to the mayor and council member of such city, and no holder of any such other office shall be required to resign such other office in order to become and remain a candidate for the office of mayor or council member of any such city.

Neb. Rev. Stat. § 14-230 (1997).

Language in Omaha's home rule charter on qualifications for city council are consistent with state statute. "No person shall be disqualified from candidacy for the office of Councilmember because of the fact that such person holds any other public office, either elective or appointive, and no holder of any such other office shall be required to resign such other office in order to become and remain a candidate for the office of Councilmember." Omaha, Neb., Charter art. II, § 2.02 (1984).

Finally, § 79-313 identifies the qualifications for membership on the State Board of

Education. The prohibition against holding any other public office is limited to state level offices and therefore does not apply to a position on the city council.

> No person shall be eligible to membership on the State Board of Education (1) who is actively engaged in the teaching profession, (2) who is a holder of any state office, a member of a state board or commission, or a candidate for any state office, board, or commission, or (3) unless he or she is a citizen of the United States, a resident of the state for a period of at least six months, and a resident of the district from which he or she is elected for a period of at least six months immediately preceding his or her election.

Neb. Rev. Stat. § 79-313 (1996).

The above analysis clearly indicates that you may continue to serve as a member of the State Board of Education and be a candidate for or member of the Omaha City Council.

Sincerely yours,

DON STENBERG
Attorney General

Charlotte R. Koranda

Charlotte R. Koranda
Assistant Attorney General

Approved by:

Attorney General

42-316-10.5