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NO.
STATE OF NEBRASKA
OFFICIAL
JAN 15 1997
#97008
DEPT. OF JUSTICE

DON STENBERG
ATTORNEY GENERAL

STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

DATE: January 13, 1997

SUBJECT: Commission and approval of Commission minutes

REQUESTED BY: Mr. Alfonza Whitaker, Executive Director
Nebraska Equal Opportunity Commission

WRITTEN BY: Don Stenberg, Attorney General
Suzanna Glover-Ettrich, Assistant Attorney General

You have requested an Attorney General's Opinion regarding the proper procedure for an individual Commissioner of the Nebraska Equal Opportunity Commission who wishes to challenge, amend, or correct the minutes from a previous Commission meeting. Particularly, the Commissioners wanted to know if it is permissible for a Commissioner to prepare his/her own version of the minutes and submit same to the Commissioners, thus becoming part of the Commission meeting documents and a public record. We conclude that an individual Commissioner may offer his/her own version of the minutes as a motion to amend the minutes from a previous Commission meeting.

The Nebraska public meetings law, Neb. Rev. Stat. § 84-1408-1414 (1994), which applies to meetings of the Nebraska Equal Opportunity Commission, is intended to ensure that public policy is formulated at open meetings. *Marks v. Judicial Nominating Committee*, 236 Neb. 429, 461 N.W.2d 551 (1990). Neb. Rev. Stat. § 84-1413 (1994) requires that each public body keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed. The minutes of all meetings and evidence and documentation received or disclosed in open session are public records and open to the public inspection during normal business hours. § 84-1413(4). Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier. § 84-1413(5). As a general rule, a public body may, at a subsequent meeting, if no intervening rights of third persons have

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arisen, order the minutes or record of its own proceedings at a previous meeting to be corrected according to the facts, so as to make them speak the truth, although the record has once been approved. *State ex. rel. Schuler v. Dunbar*, 214 Neb. 85, 333 N.W.2d 652 (1983) (*citing* 56 Am. Jur. 2d *Municipal Corporations*, etc. § 179 (1971)). The purpose of a *nunc pro tunc* correction is to make the record speak the truth and not to correct oversights or failures in the performance of mandatory acts. *Schuler*, 214 Neb. at 89. Further, corrections made in the minutes should be made within a reasonable time. *Village of McGrew v. Steidley*, 208 Neb. 726, 736, 305 N.W.2d 627 (1981).

Under Robert's Rules of Order, the parliamentary authority which the Commission has adopted, the proper procedure for an individual Commissioner who wishes to amend or correct the minutes from a previous Commission meeting depends on whether or not the minutes have been adopted by the Commission. A Commissioner may either make a motion to amend the minutes before adoption or after adoption. *Robert's Rules of Order Newly Revised*, §§ 12, 34 (9th ed. 1990) [*Robert's*]. For important or complex questions, or when greater formality is desired, a Commissioner would present the motion in the form of a resolution. A resolution or a long or complicated motion should be prepared in advance of the meeting, if possible, and should be put into writing before it is offered. *Robert's* at § 4.

The motion to amend minutes before adoption is a subsidiary motion and must be seconded; this motion is debatable, amendable, and can be reconsidered. *Robert's* at § 12. Action on the motion to amend the minutes before adoption requires at least four votes. Neb. Rev. Stat. § 48-1116 (1993) (*see also* Op. Att'y Gen. No. 96048 of June 7, 1996). Further, any action taken on any motion shall be by roll call vote of the Commission in open session, and the record shall state how each member voted or if the member was absent or not voting. Neb. Rev. Stat. 84-1413(2) (1994).

Under Robert's Rules of Order, there are two motions which can be used to correct minutes after adoption - a motion to Rescind and a motion to Amend Something Previously Adopted. *Robert's* at § 34. A motion to Rescind - also known as Repeal or Annul - is the motion by which a previous action or order can be cancelled or countermanded. The effect of a motion to Rescind is to strike out an entire main motion, resolution, rule, bylaw, section, or paragraph that has been adopted at some previous time. Amend Something Previously Adopted is the motion that can be used if it is desired to change only a part of the text, or to substitute different versions. The motions to Rescind and to Amend Something Previously Adopted can be made only when no other motion is pending, must be seconded, and are debatable and amendable. Only a

negative vote on these motions can be reconsidered and approval requires the vote of at least four Commissioners. Neb. Rev. Stat. § 48-1116 (1993).

You also requested an opinion regarding the process for approving minutes when there is a disagreement between the Commissioners relative to the minutes. According to Robert's Rules of Order, the minutes of each meeting are normally read and approved at the beginning of the next regular meeting, immediately after the call to order; corrections, if any, and approval of the minutes are normally done by unanimous consent. *Robert's* at §§ 4, 47. To obtain general consent, the chair states that "If there is no objection . . .," the minutes will be approved. If any member objects, the chair must state the question on the motion, allow any desired debate, and put the question to a vote. *Robert's* at § 4. As with any other motion, approval of the minutes by the Commission requires at least four votes. Neb. Rev. Stat. § 48-1116 (1993). Op. Att'y Gen. No. 81162 of December 24, 1981, stated that should there be a disapproval or correction of the minutes which have already been published, that fact should be published after the meeting where the disapproval was noted.

Sincerely,

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Approved:

DON STENBERG, Attorney General

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