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HO.
STATE OF NEBRASKA
OFFICIAL
MAY 31 1994
DEPT. OF JUSTICE

DATE: May 27, 1994

SUBJECT: Appointment of Commission Members

REQUESTED BY: Dannie Trautwein, Executive Director
Nebraska Accountability and Disclosure Commission

WRITTEN BY: Don Stenberg, Attorney General
Linda L. Willard, Assistant Attorney General

You have inquired regarding the proper procedure for appointment of certain members to the Accountability and Disclosure Commission. Your first question is whether the list process set out in Neb. Rev. Stat. § 49-14,105 (1992 Cum. Supp.) needs to be followed if a member of the Commission is eligible for reappointment and the appointing authority either expresses the intent to reappoint the current member or does, in fact, reappoint the current member to a new term commencing the day following the expiration of the current term. It is our determination that the list process must be followed in this case.

Your second question presumes that the list process needs to be followed and inquires whether the list submitted to the Governor needs to include the name of the member eligible for reappointment or if that individual would be eligible for reappointment regardless of whether his or her name appears on the list. It is our conclusion that the individual may only be appointed if his or her name appears upon the list submitted to the Governor.

Your third question is, if the list process does not apply, if there is a time period in which the appointing authority must act. Since we have determined that the list process does apply, we have not responded to this question.

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In construing a statute, all parts of an act relating to the same subject shall be considered together and not each by itself. ***See State v. Jennings***, 195 Neb. 434, 238 N.W.2d 477 (1976). Also, statutes relating to the same subject are in pari materia and should be construed together. ***McGowen v. Nebraska State Bank***, 229 Neb. 471, 427 N.W.2d 772 (1988). Therefore, Neb. Rev. Stat. § 49-14,113 (1988) must be viewed in relation to other statutes addressing appointment and membership on the Commission.

Neb. Rev. Stat. § 49-14,113 (1992 Cum. Supp.) provides that a person appointed to fill a vacancy in an unexpired term shall be appointed to the unexpired term of the member such individual succeeds and shall be eligible for appointment to one full six year term thereafter. Neb. Rev. Stat. § 49-14,105 (1992 Cum. Supp.) addresses the appointment of members to the Nebraska Accountability and Disclosure Commission. In addressing gubernatorial appointments it states at (1):

> Four members shall be appointed by the Governor in the following manner:
>
> > (a) One member from each of two lists submitted by the Legislature. Each list shall contain at least five individuals who are qualified to serve pursuant to section 49-14,106 and subsection (2) of 49-14,111 and
> >
> > (b) Two members from the citizenry of the state at large; . . .

Section 49-14,111(2) (1988) provides that "[a]ll succeeding appointments to the commission shall be made in the same manner as the original appointments are made and succeeding appointees shall have the same qualifications as their predecessors. . . ."

Generally the word "shall" appearing in a statute implies that whatever "shall" be done is mandatory. ***Minden Beef Co. v. Cost of Living Council***, 362 F. Supp. 298 (1973); ***State v. Stratton***, 220 Neb. 854, 374 N.W.2d 31 (1985); ***NC Plus Hybrids v. Growers Seed Association***, 219 Neb. 296, 363 N.W.2d 362 (1985). Thus, a vacancy occurring in a position created by § 49-14,105(1)(a) must be filled from a list submitted to the Governor by the Legislature, and such list must contain the names of at least five individuals.

Section 49-14,113 merely provides that certain members of the Commission may be eligible for reappointment to the Commission. However, reading the statutes together, appointments to the Commission by the Governor under § 49-14,105(1)(a) must be made **from the list submitted** to him or her. Therefore, it is our

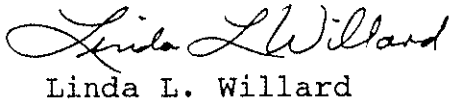
conclusion that any appointment made pursuant to § 49-14,105(1)(a) must be made from a list submitted by the Legislature.

However, an individual appointed to fill an unexpired term which appointment process is made pursuant to 49-105(1)(a) could be appointed to fill a term pursuant to 49-105(1)(b), if such vacancy exists, without having the name submitted on a list since there are no "list" restrictions on an appointment under this portion of the statute.

Your second question presumed that the list process was needed and inquired whether the list needed to include the name of the member eligible for reappointment or if the eligible person could be reappointed whether or not his or her name appeared on the list. Section 49-14,113 merely states that an individual who was appointed to an unexpired term is merely eligible for appointment to one of the full six year terms. The individual may not automatically be appointed by the Governor under § 49-14,105(1)(a). In order for the Governor to appoint the individual to a full six year term under § 49-14,105(1)(a), he or she must be eligible and must have their name appear on the list submitted to the Governor by the Legislature pursuant to the above-referenced statute.

Sincerely,

DON STENBERG
Attorney General



Linda L. Willard
Assistant Attorney General

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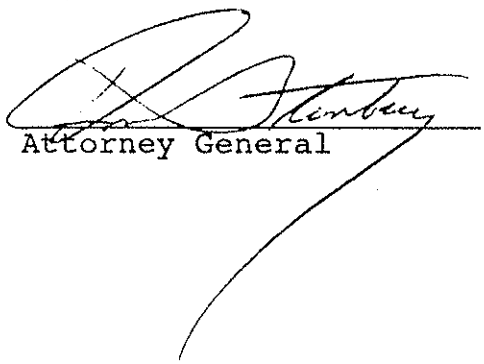

Attorney General