



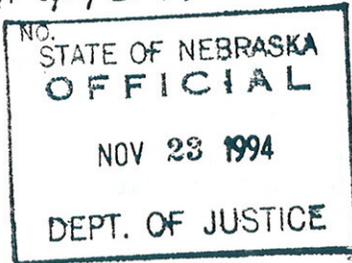
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DATE: November 22, 1994

SUBJECT: Effect of Nebraska Public Meetings and Public Records Statutes on Operations of the Excellence In Education Council; Eligibility of Certain Major Competitive Grant Projects Under Neb. Rev. Stat. § 9-812

REQUESTED BY: Ross N. Tegeler, Chairman  
 Excellence in Education Council

WRITTEN BY: Don Stenberg, Attorney General  
 Lauren L. Hill, Assistant Attorney General

This opinion is written in response to your November 9, 1994, inquiry which raises several questions regarding operations of the Excellence In Education Council ["Council"]. Pursuant to the authority vested in him by the Legislature, the Governor has appointed the eleven-member council to assist and advise him in awarding incentive grants from the Education Innovation Fund. See Neb. Rev. Stat. § 9-812(2) (Cum. Supp. 1994). Each of the questions which you have submitted are set forth and addressed below.

**Question #1: The first concern regards the matter of voting on recommendation of funding approval or denial for grant applicants during the Council's public meeting. The Council's recommendations would then be forwarded to Governor Nelson for the final funding decision. Disclosure of the Council's recommendations would be premature at the public meeting since the Governor has not evaluated the slate of applicants. How would you suggest the Council conduct this business to be sure to comply with the Public Meeting Law?**

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Implicit in this question is your recognition that the Council is a "public body" as defined by Neb. Rev. Stat. § 84-1409(1) (Supp. 1993), and that, as such, it must comply with Nebraska's public meetings law. See Neb. Rev. Stat. § 84-1408 - § 84-1414 (1987, Supp. 1993 & Laws 1994, LB 621). A pertinent portion of the public meetings law provides:

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret. Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies. . . .

Neb. Rev. Stat. § 84-1408 (1987).

The Legislature has structured the awarding of incentive grants from the Education Innovation Fund as a two-tiered process. Clearly, the final decision on each grant award is made by the Governor. See Neb. Rev. Stat. § 9-812(2) (Supp. 1994). The statute contemplates, however, that preliminary to the Governor's decision, the Council will have "[p]rovided recommendations to [him] regarding the selection of projects to be funded and the distribution and duration of project funding." *Id.* Therefore, any formal action taken by the Council, including voting upon the approval or denial of funding proposals, must be conducted in the context of a public meeting. We understand the Council's concern that the Governor may ultimately alter the Council's suggestions as to specific project proposals. Despite this concern, the Council's final grant award recommendations may not be withheld from the public.

**Question #2: A second concern regards the eligibility, under Rule 89, of proposed projects which seek to serve the following populations:**

- a) Preschool age children not enrolled in a public school;
- b) High school dropouts. If dropouts may be served, must they be restricted to those originally enrolled in public schools and/or be below age 21?
- c) General populations served by entities such as a YMCA, recreation center or other non-profit. Can the Council require projects conducting activities off public school premises and before/after school hours be required to serve only students documented as currently enrolled in a public school?

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The Legislature has established that incentive grants are to be awarded

to encourage the development of strategic school improvement plans by school districts for accomplishing high performance learning and to encourage schools to establish innovations in programs or practices that result in restructuring of school organization, school management, and instructional programs which bring about improvement in the quality of education.

Neb. Rev. Stat. § 9-812(2) (Cum. Supp. 1994); See also Informal Op. Att'y Gen No. 94-020 (May 10, 1994).

Two statutory requirements have been imposed in order for a major competitive grant to be awarded. First, "[t]he development of a strategic school improvement plan by a school district shall be required before a grant is awarded." *Id.* Second, "[m]ajor competitive grants shall be available to support innovative programs which are directly related to strategic school improvement plans." *Id.*

Analyzing your inquiry under these provisions, we are guided by two principals of statutory construction. First, we are required to give "effect . . . , if possible, to all the several parts of a statute; no sentence, clause, or word should be rejected as meaningless or superfluous if it can be avoided." *Wilson v. Misko*, 244 Neb. 526, 539-40, 508 N.W.2d 238, 248-49 (1993). Next, we "must look at the statutory objective to be accomplished, the problem to be remedied, or the purpose to be served, and then place on the statute a reasonable construction which best achieves the purpose of the statute, rather than a construction defeating the statutory purpose." *Durand v. Western Supply Co.*, 245 Neb. 649, 651, \_\_\_ N.W.2d \_\_\_ (1994).

#### 1. **Preschool-age children not in public schools.**

Your question as to the eligibility of projects which propose to serve this group of children is very broad. The Education Innovation Fund statute expressly provides that "[e]arly childhood and parent education which emphasizes child development" is one of the purposes for which incentive grants may be awarded. Neb. Rev. Stat. § 9-812(2)(g). This provision, however, must be construed in conjunction with the requirements 1) that a school district have developed a strategic school improvement plan, and 2) that the innovative program proposed by the applicant be directly related to the strategic school improvement plans. We also note that in regulations promulgated pursuant to Neb. Rev. Stat. § 9-812, a "school district" is defined as "a public school system organized to provide education in elementary and/or secondary

grades and accredited under 92 NAC 10." 92 NAC 89, § 002.09 (1994).

Without having a specific proposal before us, it is difficult to opine with certainty as to the eligibility of proposals which would serve "preschool-age children not in public schools." We can, however, clearly state that the following proposals would not qualify for funding: 1) proposals which are not directly related to a strategic school improvement plan, and 2) proposals which would serve preschool-age students in a school district which has not developed a strategic school improvement plan.

## 2. High school dropouts.

Your inquiry here centers upon whether students who have dropped-out of high school may be the focus of programs seeking grant funds and, if so, whether the students who are served by such a project must be under the age of 21. The Education Innovation Fund statute expressly provides that major competitive grants may be awarded to "[a]lternative programs for students, including under-represented groups, at-risk students, and dropouts." Neb. Rev. Stat. § 9-812(2)(e). We find this language to authorize funding for projects which seek to serve the high school dropout population -- so long as the project complies with each of the other statutory requirements which have been set forth and discussed earlier in this opinion.

Neb. Rev. Stat. § 9-812 provides no specific guidance as to the age limit issue. Further, we found no committee testimony or floor debate directly related to this matter. Therefore, we "must look at the statutory objective to be accomplished, the problem to be remedied, or the purpose to be served, and then place on the statute a reasonable construction which best achieves the purpose of the statute. . . ." *Durand*, 245 Neb. at 651, \_\_\_ N.W.2d at \_\_\_. The ultimate goal of the Legislature's establishment of the Education Innovation Fund is to discover innovative ideas "which bring about improvement in the quality of education." Neb. Rev. Stat. § 9-812. If the problem to be remedied is a reduction in the high school dropout rate, then we urge the Council to carefully examine grant applications which will further that end.

## 3. General population of students.

We find your third question to be very broad. Again, without having a specific proposal before us, it is difficult to opine with certainty as to the eligibility of proposals which would

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serve general populations of students. Our analysis with regard to your question on preschool-age children is equally applicable here.

**Question #3:** According to Rule 89 project proposals are public records. Must we release the proposals and/or supporting documents to anyone who requests them or merely make them available for review during normal Department of Education business hours? Can any distinction be made between successful versus unsuccessful applicants? Must copies be provided if the requesting entity agrees to pay for the copy cost?

As you have noted, pursuant to regulations governing procedures for the Education Innovation Fund program, all "[p]roject proposals are public records. The council and [Nebraska Department of Education] shall each receive a copy of all materials developed using grant funds and such copies shall be public records." 92 NAC 89, § 008.07 (1994). "Public records" are defined by statute to include "all records and documents, regardless of physical form, of or belonging to this state, . . . or any agency, branch, department, board, bureau, commission, council, subunit or committee of any of the foregoing." Neb. Rev. Stat. § 84-712.01 (1987) (as amended by Laws 1994, LB 1275, § 12).

In a prior opinion, we were asked by an agency whether the public records statutes would require disclosure of the names and certain materials of unsuccessful applicants for employment positions within the agency. See Op. Att'y Gen. No. 94-035 (May 13, 1994). We determined that requirements of the public records statutes could not be abrogated merely because applicants were unsuccessful, rather than successful, in obtaining agency employment. *Id.* at 2. We reach the same conclusion with regard to your inquiry; therefore, the Council may not, for public records purposes, distinguish between unsuccessful and successful grant proposals. "Moreover, to the extent that your . . . question is simply an inquiry as to whether the identities of applicants [for grant funds] may generally be kept confidential, it is our view that the answer to that question is 'no,' if those identities may be ascertained from records or documents in the possession of the [Council]." *Id.*

In further response to your question, we note that Neb. Rev. Stat. § 84-712 (1987) empowers all persons interested in public records "to examine the same, and to make memoranda and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business." We noted in a prior opinion that

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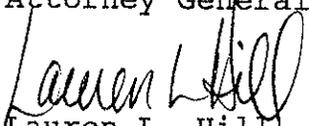
[t]he Public Records Statutes, therefore, give interested parties in Nebraska a broad general right to view public documents at the governmental offices in possession of those documents during normal business hours, and to make notes or memoranda therefrom. The Public Records Statutes, on the other hand, do not require public officials to provide copies of public records, to answer questions, or to create documents which do not otherwise exist. In particular, the Public Records Statutes do not require agencies to create abstracts or lists in response to a public records request.

Op. Att'y Gen. No. 94-035 (May 13, 1994) (citing Op. Att'y Gen. No. 87-104 (October 27, 1987)).

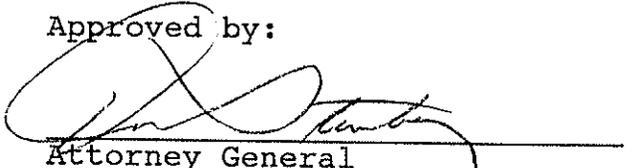
Thus, it is evident from both the public records statutes and the conclusion reached in our prior opinions that the Council's obligation is to make the proposals available for public inspection. It is for the Council to determine, as a matter of policy, whether it will expend its efforts to provide actual copies of various proposals upon public inquiry.

Sincerely,

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Assistant Attorney General

Approved by:

  
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cc: Members, Excellence in Education Council  
Joel Sherling, Council Executive Director