STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
FAX (402) 471-3297

#92001

STATE OF NEBRASKA
OFFICIAL
JAN 3 1992
DEPT. OF JUSTICE

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

DATE: December 27, 1991

SUBJECT: The Commissioner of Education has no authority to enter into a settlement agreement with the holder of a certificate to teach in the public schools of this State to suspend or revoke the certificate for a time certain without first filing a petition and seeking a review thereof by the Professional Practices Commission unless the agreement calls for the maximum suspension or revocation of the certificate permitted by law.

REQUESTED BY: Joe E. Lutjeharms, Commissioner of Education

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

It appears from the facts stated in your letter of inquiry that a holder of a certificate to teach in the public schools of this State was found guilty of theft of a sum of money by unlawful taking in violation of Neb.Rev.Stat. § 28-511 (Reissue 1989). Factually, it also appears that pursuant to a civil complaint filed by the school district an investigation was initiated and the certificate holder was notified thereof. Subsequent thereto, it further appears from the facts stated in your inquiry that the certificate holder proposed a settlement of the complaint whereby the certificate holder would agree to an order by the State Board of Education revoking her certificate for a period of one year. You have asked if the Commissioner of Education and the holder of a certificate to teach in the public schools of this state may enter into an agreement involving the suspension of the certificate for a time certain and seek the approval thereof by the State Board of Education without the filing of a petition and review by the Professional Practices Commission?

It seems clear that the Commissioner of Education has a duty to investigate any complaint that is filed with him, or which is otherwise called to his attention, which allegedly constitutes legal grounds for the revocation or suspension of a certificate to

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teach in the schools in this state. If the alleged violation(s) is serious enough to warrant suspension or revocation of a certificate to teach in the public schools, it also seems clear that the Professional Practices Commission, at the request of the State Board of Education, has a duty to hold a hearing thereon. Neb.Reb.Stat. § 79-1283 (Reissue 1987) plainly states:

> * * *. The commission recommendations shall be made a part of the record of the board in all cases of public school certificate revocation or suspension and reinstatement of a revoked public school certificate.

It is therefore our opinion that the Commissioner of Education has no authority to enter into a settlement agreement with the holder of a certificate to teach in the public schools of this State to suspend or revoke the certificate for a time certain without first filing a petition and seeking a review thereof by the Professional Practices Commission unless the agreement calls for the maximum suspension or revocation of the certificate permitted by law. We recognize the administrative rules promulgated pursuant to the above cited statute might be construed to reach a contrary result. However, it is settled law that a governmental agency "has no authority to rewrite the statutory scheme by means of regulations." University of Texas v. Camenisch, 451 U.S. 390, 399 (1981).

Respectfully submitted,

DON STENBERG
Attorney General

Harold Mosher
Assistant Attorney General

APPROVED BY:

Don Stenberg, Attorney General