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STATE OF NEBRASKA
OFFICIAL
FEB 11 1992
DEPT. OF JUSTICE

DATE: February 7, 1992.

SUBJECT: May members of a public body participate in a meeting of that body by means of a conference telephone call.

REQUESTED BY: Jean A. Lovell, Executive Director of the Nebraska Commission on Law Enforcement and Criminal Justice.

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

The Nebraska County Attorney Standards Advisory Council, as established by Neb.Rev.Stat. §23-1213 (Reissue 1987), is a group of individuals who are statutorily charged with the responsibility of establishing the annual number of hours of continuing legal education required for Nebraska county attorneys. The council also has the responsibility of developing the educational criteria, formats, etc. for that continuing legal education. At least four members of the group must be county attorneys, and there have apparently been some problems in scheduling meetings of the Council at times that would insure the presence of a quorum. As a result, you have requested our views as to whether members of the council can take part in meetings by conference telephone, and as to whether a person participating by telephone can be used to achieve a quorum. As discussed below, we believe that a non-emergency meeting by conference telephone does not meet the requirements of our state Public Meetings Statutes.

There are really two questions inherent in your opinion request regarding the propriety of conference telephone calls. First, are there statutes or other procedural rules which specifically prohibit the use of a telephone conference call to conduct meetings of the council? Second, do meetings conducted by

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conference telephone call generally violate the provisions of our state Public Meetings Statutes, Neb.Rev.Stat. §§ 84-1408 et seq. (Reissue 1987)?

We are unaware of any procedural statutes which prohibit the use of a conference telephone call for the meeting of a public body. It seems to us that such a meeting would be entirely proper, particularly if the operating procedures adopted by the public body authorized such a meeting. On the other hand, the Public Meetings Statutes do present a problem with respect to such conference calls.

Neb.Rev.Stat. § 84-1409(2) (1990 Cum. Supp.) provides that:

> Meeting shall mean all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.

While this definition is obviously very broad, it does not specifically address the use of a conference telephone call for a meeting of a public body. In addition, the legislative history of the Public Meetings Statutes sheds little light on this issue, although there is some discussion of the use of conference calls in connection with emergency meetings.

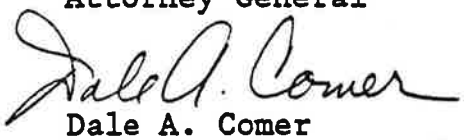
We have also found no Nebraska cases which deal with the application of the Public Meetings Statutes to telephone conference calls. There is case authority from other jurisdictions, but it is contradictory. Compare Babac v. Pennsylvania Milk Marketing Board, 584 A.2d 399 (Pa.Cmwlth 1990) (meeting by conference call and speakerphone does not constitute quorum or otherwise comply with Pennsylvania Sunshine Act) Roanoke City School Board v. Times-World Corp., 226 Va. 185, 307 S.W.2d 256 (1983) (telephone conference call does not constitute meeting under Virginia Freedom of Information Act) and State v. Vermont Emergency Board, 136 Vt. 506, 394 A.2d 1360 (1978) (Emergency Board could not conduct meeting by use of conference call) with Goode v. Department of Social Services, 143 Mich.App. 756, 373 N.W.2d 210 (1985) (no problem under state Open Meetings Act with holding hearings by telephone conference call).

If our Public Meetings Statutes were entirely silent as to the use of telephones for public meetings, we could well be inclined to conclude that such meetings through the use of a speakerphone so as to make the meeting audible to the public would be permissible. However, Section 84-1411(3), dealing with emergency meetings of public bodies, states, in pertinent part, "...emergency meetings may be held by means of electronic or telecommunication equipment."

Therefore, the Legislature has specifically provided that telephones and presumably telephone conference calls may be used for emergency meetings. Statutes which pertain to the same subject matter are in pari materia, and they may be conjunctively considered and construed to determine the intent of the legislature. Pump & Pantry, Inc. v. City of Grand Island, 233 Neb. 191, 444 N.W.2d 312 (1989). It appears to us that if telephonic meetings were contemplated for all meetings under the Public Meetings Statutes, there would have been no need for the Legislature to separately authorize such meetings with respect to emergency situations. As a result, we do not believe that the Public Meetings Statutes authorize the use of telephone conference calls for non-emergency meetings of a public body. It necessarily follows that absent members of the public body may not be counted to achieve a quorum through the use of a conference call.

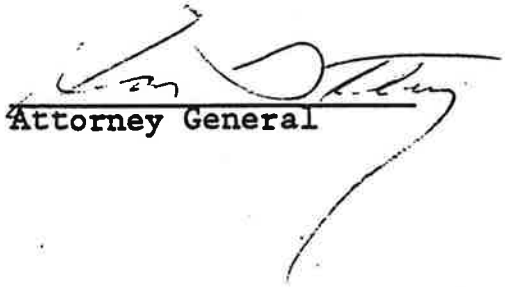
Sincerely yours,

DON STENBERG
Attorney General



Dale A. Comer
Assistant Attorney General

Approved by:



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