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STATE OF NEBRASKA
OFFICIAL
MAR 2 1992
DEPT. OF JUSTICE

DATE: February 26, 1992

SUBJECT: Ex Officio Member of the Commission on Mexican-Americans

REQUESTED BY: E. Benjamin Nelson, Governor

WRITTEN BY: Don Stenberg, Attorney General
Jan E. Rempe, Assistant Attorney General

You have requested our opinion regarding whether an ex officio member of the Commission on Mexican-Americans may serve as an officer of the Commission, or whether an ex officio member's power is limited to voting privileges.

Neb. Rev. Stat. § 81-8,263 (Reissue 1987) states that the Commission shall consist of nine members appointed by the Governor. In addition to these nine members, § 81-8,263 provides that "[t]he Governor or his appointee shall be an ex officio member of the commission with the power to vote." Neb. Rev. Stat. § 81-8,264 (Reissue 1987) allows the Commission to "elect one of its members as chairman and one as secretary to serve a one-year term."

An "ex officio member" of a board or commission is "one who is a member by virtue of his title to a particular office without the necessity of a further warrant or appointment." State ex rel. Aurora County v. Circuit Court, 268 N.W.2d 607, 609 (S.D. 1978), See also Black's Law Dictionary 516 (5th ed. 1979). "Unless their powers are restricted by statute, 'ex officio members' are vested with the full power and authority to do any and all things necessary and essential to carry out the purpose of the law creating the board or body." State ex rel. Aurora County, supra, at 609. See also Barber Pure Milk Co. v. Alabama State Milk Control Bd., 275 Ala. 489, 156 So. 2d 351 (1963).

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In contrast to statutes which simply designate a person as an "ex officio member" without describing the member's powers or responsibilities, see Barber, supra, § 81-8,263 specifies that the ex officio member of the Commission has the "power to vote."

> It is a general principle of interpretation that the mention of one thing implies the exclusion of another; expressio unius est exclusio alterius. Under this principle the enumeration of certain powers implies the exclusion of all others not fairly incident to those enumerated and an affirmative description of cases in which certain powers may be exercised implies a negative on the exercise of such powers in other cases.

Hueftle v. Eustis Cemetery Ass'n, 171 Neb. 293, 296, 106 N.W.2d 400, 403 (1960). See International Bhd. of Elec. Workers v. City of Hastings, 179 Neb. 455, 138 N.W.2d 822 (1965); Harrington v. Grieser, 154 Neb. 685, 48 N.W.2d 753 (1951). See also Michigan Wolverine Student Coop. v. Wm. Goodyear & Co., 314 Mich. 590, 22 N.W.2d 884 (1946) (powers specifically conferred in a statute should not be extended by inference since, under rules of statutory construction, such specificity evidences an intent to grant no other or greater power than that expressly provided).

Based on the above rules of statutory construction, we conclude that the express mention of the ex officio Commission member's "power to vote" in § 81-8,263 implies exclusion of the member's right to exercise other or greater powers like serving as an officer of the Commission. If Nebraska's Legislature had intended to allow the Commission's ex officio member to exercise the same authority as other Commission members by serving as an officer, the Legislature would have granted such authority in § 81-8,263. See Neb. Rev. Stat. §§ 13-1304(7) (Reissue 1987) (county treasurer "shall be ex officio the treasurer" of the Public Building Commission); 71-1524(5) (Reissue 1990) (executive director of housing authority "shall serve as ex officio secretary of the authority"); 2-953(6) (Cum. Supp. 1990) (the "ex officio member shall possess the same authority as other members, including the right to vote").

Therefore, § 81-8,263 restricts the power of the ex officio member of the Commission on Mexican-Americans to voting and excludes the power to serve as an officer of the Commission.

Sincerely,

DON STENBERG
Attorney General

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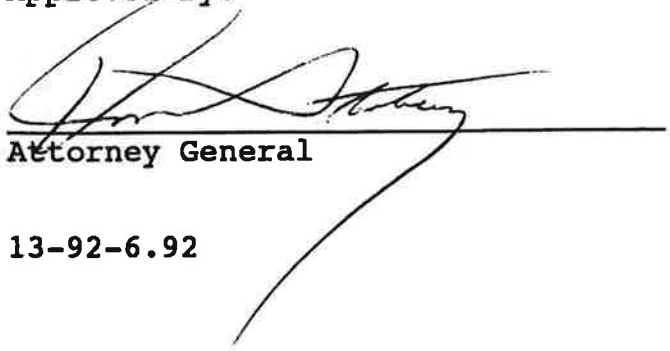
Approved By:



Attorney General

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