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NO.
STATE OF NEBRASKA
OFFICIAL
JUL 7 1993
DEPT. OF JUSTICE

DATE: July 2, 1993

SUBJECT: Crime Commission Powers

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

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

You have asked several questions regarding the powers of the Nebraska Commission on Law Enforcement and Criminal Justice (Commission) with respect to advisory committees and the Nebraska Law Enforcement Training Center. Your first question concerns Neb. Rev. Stat. § 81-1403 (Cum.Supp. 1992) and whether the duties set out in this section could be achieved by a committee which includes the members of the Police Standards Advisory Council (Council). The Council is established pursuant to Neb. Rev. Stat. §§ 81-1406 through 81-1409 (1987). The Commission is created pursuant to Neb. Rev. Stat. § 81-1416, and the duties of the Commission relative to the Law Enforcement Training Center are set out in Neb. Rev. Stat. § 81-1403.

It should be noted that Chapter 81, Article 14 of the State Statutes is divided into several subsections. The first subsection is captioned "Nebraska Law Enforcement and Training Center." This subsection creates the Training Center and sets out the duties of the Commission in relation to the Training Center. The second subsection is titled "Commission on Law Enforcement and Criminal Justice." This subsection creates the Commission and sets out the duties of the Commission in areas not related to the Training Center. This division can be partly explained through a review of legislative history. The Training Center was originally established by the Legislature in 1969 and was under the control

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and supervision of the Superintendent of Law Enforcement and Public Safety. In 1971, the Training Center was placed under the control and supervision of the Commission. This was accomplished by the Legislature replacing "superintendent" with "commission" in the statutes. However, the Legislature did maintain a separation of Commission duties as relates to the Training Center and the Commission itself. Therefore, in discussing the Commission duties in relation to the Training Center, we will concentrate on those duties set out in Neb. Rev. Stat. § 81-1403.

When the statutory language is plain and unambiguous, no judicial interpretation is needed to ascertain the statute's meaning, so that absent statutory indication to the contrary, words in a statute will be given their ordinary meaning. *See Nebraska State Board of Agriculture v. Nebraska State Racing Commission*, 239 Neb. 762, 478 N.W.2d 270 (1992). Further, the Nebraska Supreme Court held in *State of Nebraska v. Home Insurance Company*, 59 Neb. 524, 534, 81 N.W.2d 443, 447 (1900), that, "[t]he state acts only through its officers, and they can perform only such duties as are assigned by law, . . ."

> In general, administrative officers and bodies cannot alienate, surrender, or abridge their powers and duties, and they cannot legally confer on their employees or others authority and functions which under the law may be exercised only by them or by other officers or tribunals. Accordingly, in the absence of permissive constitutional or statutory provisions, administrative officers and agencies cannot delegate to a subordinate or another powers and functions which are discretionary or quasi judicial in character, or which require the exercise of judgment; and subordinate officials have no power with respect to such duties. On the other hand, the general rule is that mere ministerial functions may be delegated.

73 C.J.S. Public Administrative Law and Procedure § 56 at 513-514 (1983). However, in *Fulmer v. Jensen*, 221 Neb. 582, 583, 379 N.W.2d 736, 739 (1986), where the statutes permitted the agency head to employ personnel necessary to carry out the duties of his office, the Nebraska Supreme Court held that "[t]he authority to delegate discretionary and quasi-judicial powers to agency subordinates is implied where the powers bestowed upon an agency head 'are impossible of personal execution.'" (Citations omitted.)

In addressing the powers of boards and commissions, the general rule is that "[a] board or commission must observe statutory conditions and restrictions on its authority to delegate its powers and must follow a prescribed method or procedure by

which it may be accomplished." 73 C.J.S. Public Administrative Law and Procedure § 56 at 515.

The statute addressed to the general powers of the Commission permit the Commission to delegate appropriate powers and duties to advisory committees (§ 81-1423(4)). However, the statute setting out the duties of the Commission relative to the Police Officers Training Center (§ 81-1403) does not include any specific powers of delegation. Therefore, it is our determination that the Commission may delegate only those duties relative to the Training Center which are mere ministerial functions or impossible of personal execution. All other duties specified in § 81-1403 must be performed by the Commission itself. It is our further determination that § 81-1403(9) does not encompass the power to delegate Commission duties since it does not specifically address delegation of duties or authority. Subsection (9) could permit appointment of a committee or committees to perform ministerial functions or to advise the Commission on areas addressed in §§ 81-1401 through 81-1414.06. Some or all members of the Council could be appointed to such a committee. However, the duties specifically delegated by the Legislature in § 81-1403 to the Commission must ultimately be performed by the Commission.

Your second question is whether the language of Neb. Rev. Stat. § 81-1403(9) which states that the Commission shall "do all things necessary to carry out the purpose of the training center" could allow the Commission the latitude to develop a committee that could operate in an administrative capacity. Your question is difficult to answer since the answer would depend on whether an administrative committee was deemed to be necessary to perform any duties or activities and would also depend on what authority or duties would be given to such an administrative committee.

The question of what is "necessary" was addressed by the Nebraska Supreme Court in ***In re Application A-16642***, 236 Neb. 671, 699, 463 N.W.2d 591, 609 (1990), wherein the court stated "'necessary,' particularly when used in a statute, may mean anything from 'indispensable' to 'convenient.'" Thus, if appointment of an administrative committee were convenient for operating the Training Center, the statutes would appear to allow such action. What duties such a committee could perform is another question.

Neb. Rev. Stat. § 81-1403 provides that the duties listed therein shall be performed by the Commission. Neb. Rev. Stat. § 81-1404 provides that the duties listed therein shall be performed by the Director of the Nebraska Law Enforcement Training Center. Generally, in the construction of statutes, the word "shall" is considered mandatory and inconsistent with the idea of discretion. ***See 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). Because the duties listed have been statutorily delegated to the respective entities, the performance of these duties may not be redelegated to others unless it is a ministerial function or some authority exists in the statutes authorizing the delegation. The question of whether a specific duty could be delegated would need to be addressed on a case-by-case basis. Based on the authorities cited above, it is our determination that generally only ministerial functions could be delegated to a committee such as you have described.

You next ask if a committee formed to operate in an administrative capacity in relation to the Training Center would be considered an "advisory" committee as set out in Neb. Rev. Stat. § 81-1423(4), and if so, if the Commission could delegate specific duties enumerated to it under § 81-1403 to such a committee. This is difficult to answer since it is unclear what you mean by "administrative capacity." The Commission could appoint an advisory committee under § 81-1403(9) which provides the Commission with authority to "[d]o all things necessary to carry out the purpose of the training center." Any advisory committee appointed in relation to the Training Center would be more appropriately appointed under this section than under § 81-1423(4). It is our determination, after review of all of the statutes, that the specific duties enumerated to the Commission under § 81-1403 may not be re-delegated. No statutory authority exists in § 81-1403 for delegating the Commission's powers or duties in relation to the Training Center to any other entity.

Our determination that an advisory committee would be more appropriate under § 81-1403(9) is based on our review of the statutes which specifically set out the Commission's powers and duties relative to the Training Center in § 81-1403. As indicated in your letter, Neb. Rev. Stat. § 81-1423(4) empowers the Commission to "appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them; . . ." The powers and duties set out in Neb. Rev. Stat. § 81-1423 are in the section of the statutes dealing specifically with the Commission on Law Enforcement and Criminal Justice. In three subsections of Neb. Rev. Stat. § 81-1423, the Commission's authority is limited to conduct of the Commission as set out in Neb. Rev. Stat. §§ 81-1415 to 81-1426. A fourth subsection provides authority to carry out sections 81-1843 through 81-1848. Those duties established under Neb. Rev. Stat. § 81-1403 are in a separate subchapter which applies specifically and exclusively to the Law Enforcement Training Center. Thus, it is our determination that advisory committees appointed under the authority of § 81-1423(4) could not be delegated duties enumerated under § 81-1403 but should be

limited to areas addressed in §§ 81-1415 to 81-1426 and §§ 81-1843 to 81-1848.

Section 81-1423(4) empowers the Commission to appoint advisory committees. Absent statutory indication to the contrary, words in a statute will be given their ordinary meaning. ***See Nebraska State Board of Agriculture***, 239 Neb. at 767, 478 N.W.2d at 273. Therefore, any committee appointed under the authority of Neb. Rev. Stat. § 81-1423(4) would be advisory only and would have the power only to give advice to the Commission. Such a committee would not have authority to take any action on behalf of the Committee other than that necessary to advise the Commission. The Commission may statutorily delegate "appropriate powers and duties" to any such advisory committee. Appropriate, when used as an adjective, means "proper; necessary; consistent or in accordance with; special; suitable." 6 C.J.S. Appropriate p. 123-124. Therefore, those powers and duties delegated to any advisory committee should be necessary and consistent with the advisory capacity. The Commission may not delegate the ability to make a final decision on any area that has been specifically delegated to the Commission by the Legislature.

Since § 81-1403(9) provides the Commission with authority to do all things necessary to carry out the purpose of the Training Center, if the Commission determines that an advisory committee is necessary to carry out the functions of the Training Center, such an advisory committee would more appropriately be established under Neb. Rev. Stat. § 81-1403(9). Such a committee could be appointed to advise the Commission on administrative matters or to handle ministerial duties and those administrative functions incapable of personal performance by the Commission.

Your next question is whether the processes listed under Neb. Rev. Stat. § 81-1404 could be concurrently and lawfully achieved by the Training Center Director reporting to an advisory committee comprised primarily of Commission and Council members. Section 81-1404 states that the Training Center Director shall "consult with the Nebraska Police Standards Advisory Council on all matters pertaining to the Training Center," and "advise the Commission concerning the operation and curricula of the Training Center in the formulation of training policies and procedures." The words of the statute are plain and unambiguous. ***Webster's Unabridged Dictionary*** (2nd Edition) defines "consult" as "to ask advice of; to seek the opinion of as a guide to one's own judgment; . . . to seek information or facts from. . . ." It defines "advise" in its transitive verb form as "to give advice or counsel to; to offer an opinion as worthy or expedient to be followed; . . . to give information to; to communicate notice to; to make acquainted with. . . ." The Director's duties are separate and distinct since one contemplates giving of information to the Commission and the other

the receipt of information from the Advisory Council. The Director of the Law Enforcement Training Center would have no statutory duty to either consult with or advise a separate advisory committee consisting of members of both the Council and the Commission. Because the Director's duties with regard to the Council and Commission are separate and distinct, it is difficult to imagine them occurring simultaneously at the same meeting. The Commission may establish advisory committees to address various issues and may direct the Director of the Training Center to work with such committees; however, they cannot alter the Director's statutorily mandated duties to the Commission and the Council.

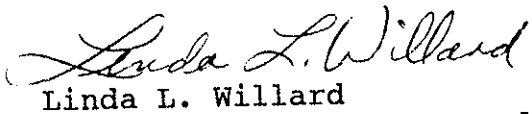
You next ask what the powers of the Executive Director of the Commission are in matters concerning the Law Enforcement Training Center and the Training Center Director. Neb. Rev. Stat. § 81-1425 (1987) sets out specifically the powers and duties of the Executive Director of the Commission. None of these duties specifically refer to the Law Enforcement Training Center. Neb. Rev. Stat. § 81-1425(9) states that the Executive Director shall perform such additional duties as may be assigned to him or her by the Commission, the Chairperson of the Commission, or by law. The Commission was created in 1969, and the Executive Director's duties were established at that time. As noted above, the Training Center was brought under the Commission's authority in 1971.

In enacting amendatory legislation, the Legislature is presumed, unless it appears to the contrary, to know the preexisting state of the law. ***In re Hilbers Property Freehold Transfer***, 211 Neb. 268, 273, 318 N.W.2d 265, 267 (1982). Therefore, it is presumed that the Legislature was aware of the Executive Director position when the Training Center was absorbed by the Commission and could have given the Executive Director specific duties or authority with regard to the Training Center if they had so wanted. The statutes give no authority to the Executive Director in relation to the Training Center. As stated above, the Commission may not delegate any of the duties relating to the Training Center or the Director of the Training Center which have been specifically delegated to the Commission by statute and are other than ministerial duties. The Commission may, as noted above, "[d]o all things necessary to carry out the purpose of the training center." Neb. Rev. Stat. § 81-1403(9). This might include delegating some functions to individuals or committees. The Executive Director of the Commission could be appointed to a committee or as the individual responsible for performing the function so delegated. The Commission may not, however, delegate any of the duties specifically assigned to it by statute in § 81-1403 (1992 Cum. Supp.) or § 81-1423 (1987) except as set out in § 81-1403(2). If you have questions regarding whether specific duties or functions in relation to the Executive Director of the Commission and either the Law Enforcement Training Center or the

Director of the Center are ministerial and thus delegable, we would be happy to review them for you.

Sincerely,

DON STENBERG
Attorney General



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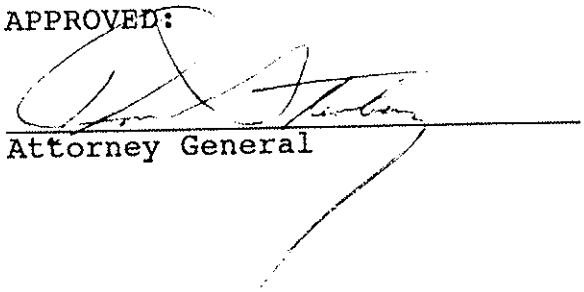

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