STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NEBRASKA 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

DON STENBERG
ATTORNEY GENERAL

L. STEVEN GRASZ
SAM GRIMMINGER
DEPUTY ATTORNEYS GENERAL

#95014

NO.
STATE OF NEBRASKA
OFFICIAL
FEB 24 1995
DEPT. OF JUSTICE

DATE: February 22, 1995

SUBJECT: Application of the Nebraska Public Meetings Statutes to the Citizen Review Board Created to Advise the Mayor of the City of Omaha

REQUESTED BY: Senator Ron Withem
Nebraska State Legislature

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

Prior to the 1995 Legislative Session, you requested our opinion as to whether the Nebraska Public Meetings Statutes, ***Neb. Rev. Stat. §§*** 84-1408 through 84-1414 (1994), apply to the "Mayor's Citizen Review Board." Presumably, your opinion request grew out of an intent to take appropriate legislative action based upon the conclusions expressed in our opinion. In any event, we requested additional information from you as to the nature of the Mayor's Citizen Review Board at issue, and you recently provided that additional information to us. Based upon your information, we do not believe that the Board in question is subject to the Public Meetings Statutes, for the reasons set forth below.

From the materials enclosed with your most recent correspondence, it appears that the Mayor's Citizen Review Board (the "Board") was created in July, 1993, by an Executive Order of the then-Mayor of the City of Omaha, P. J. Morgan. The Board is comprised of nine members, including three representatives from the Omaha Police and Fire Departments, and six citizens. Certain proportions of the citizen members of the Board must be from protected classes based upon race, national origin, or sex. Under the provisions of the Mayor's Executive Order, all of the members of the Board are appointed by the Mayor of Omaha for a set term.

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Laurie Smith Camp
Delores N. Coe-Barbee
Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce N. Harper
Lauren Lee Hill
Jay C. Hinsley
Amy Hollenbeck
William L. Howland
Marilyn B. Hutchinson
Kimberly A. Klein
Joseph P. Loudon
Charles E. Lowe
Lisa D. Martin-Price
Lynn A. Melson
Fredrick F. Neid
Marie C. Pawol
Kenneth W. Payne
Alan E. Pedersen
Paul N. Potadle
James D. Smith
James H. Spears
Mark D. Starr
John R. Thompson
Barry Wald
Terri M. Weeks
Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

Printed with soy ink on recycled paper

The Board elects its own chairperson and other officers, and it must meet at least monthly. The Board's duties include the review of complaints from citizens or civilian employees of the City of Omaha alleging one or more of the following:

1. Police Harassment.

2. Excessive use of force.

3. Use of language likely to demean the inherent dignity of any person to whom it was directed and/or to trigger disrespect for law enforcement officers.

4. A violation of the Standard Operating Procedures or rules or regulations codified by the Nebraska Commission of Law Enforcement and Criminal Justice.

The Board's review of a particular citizen or employee complaint occurs after completion of an investigation of that same matter by the Office of Professional Standards of the City of Omaha, and after a decision has been made by that Office as a consequence of its initial investigation. The Board is simply empowered to make a recommendation to the Mayor of the City of Omaha regarding a proper disposition of a citizen's complaint before it. The Executive Order creating the Board also provides that its proceedings shall not be open to the public or to the media due to the provisions of collective bargaining agreements in force and due to Section 23-25 of the Omaha Municipal Code.

From your recent correspondence, we also understand that there is no other city ordinance or City Council action in Omaha addressing the Board, nor we have been able to find any state statutes which address city boards in this area. You have also indicated that the Board "operates solely as a function of the Mayor's authority to supervise the administrative activities of the City of Omaha."

The Nebraska Public Meetings Statutes generally provide that the formation of public policy in Nebraska is public business and may not be conducted in secret. In accordance with that premise, the Public Meetings Statutes require that meetings of governmental bodies be open to the public after adequate notice, that minutes of public meetings be prepared, that votes on issues be taken in public, and so forth. However, a threshold question in any analysis under the Public Meetings Statutes involves a determination as to whether the entity involved is a "public body" subject to those statutes. Section 84-1409 defines a public body subject to the Public Meetings Statutes to include the following entities:

(a) governing bodies of all political subdivisions of the State of Nebraska,

(b) governing bodies of all agencies, now or hereafter created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska,

(c) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies, now or hereafter created by the Constitution of Nebraska, statute, or otherwise pursuant to law,

(d) the Certificate of Need Review Committee,

(e) all study or advisory committees of the executive department of the State of Nebraska, whether having continuing existence or appointed as special committees with limited existence,

(f) advisory committees of the bodies referred to in subdivisions (a), (b), and (c) of this subdivision, and

(g) instrumentalities exercising essentially public functions.

Consequently, the Mayor's Citizen Review Board must fit within the entities defined in § 84-1409, or it is not subject to the Public Meetings Statutes.

The governing body of the City of Omaha, for purposes of the Public Meeting Statutes, is obviously the Omaha City Council. Therefore, the Board at issue here, which reports to the Mayor rather than to the City Council and which contains no members of the Omaha City Council, is clearly neither the "governing body" of the political subdivision known as the City of Omaha nor an advisory committee to that governing body. Nor do we believe that the Board is an independent board or commission, since it only has authority to ***recommend*** a certain course of action to the Mayor. The Board is also obviously not the Certificate of Need Review Committee or a study or advisory committee of the executive department of State of Nebraska. Therefore, the Board in this case does not fall under the bulk of the definitions for "public body" set out in § 84-1409.

In fact, it appears that the only definition under § 84-1409 which might apply to the Board in question is the definition found in subsection (g) pertaining to instrumentalities exercising

essentially public functions. However, the legislative history of that language, which was added to the Public Meetings Statutes in 1989, indicates that it was specifically intended to reach the Nebraska Investment Finance Authority and other entities which have been granted the power and authority to issue bonds and to borrow and expend public money. Floor Debate on LB 311, 91st Nebraska Legislature, First Session, May 9, 1989, at 6039, 6040. That description obviously does not fit the Board at issue here. As a result, we do not believe that the Mayor's Citizen Advisory Board fits under any of the categories of public body listed in § 84-1409.

We would also point out that the legislative history of LB 325 from 1975, the original version of § 84-1409, indicates that it was not the intent of the Legislature at that time to subject the management or administrative functions of public bodies to public meetings requirements. Floor Debate on LB 325, 84th Nebraska Legislature, First Session, May 14, 1975, at 4604, 4605. Rather, public meetings requirements were to apply to policy making bodies, exercising legislative or quasi-legislative functions. Floor Debate on LB 325, 84th Nebraska Legislature, First Session, May 14, 1975, at 4616, 4617. As Senator Anderson, the introducer of LB 325, stated:

> . . . in the definition of a public body that is covered by the open meetings act, there was some concern expressed at the hearing that the way the language is set it could cover management teams, ***it could cover a mayor meeting with the department heads or something like this. That was not the intent of the act.*** I indicated that at the hearing. The committee amendment was development (sic) to make sure that management teams could not be included in the definition of public body under the act.

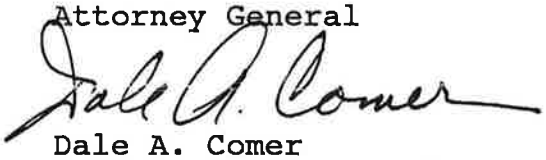
Floor Debate on LB 325, 84th Nebraska Legislature, First Session, May 14, 1975, at 4605 (emphasis added).

It seems to us that the Board in question in this case is really a type of management body, formed to aid the Mayor of Omaha in his administrative duties in connection with the Omaha Police and Fire Departments. In that regard, this situation is not unlike the situation discussed in our Op. Att'y Gen. No. 92020 (February 12, 1992). In that opinion, we concluded that various academic planning committees of the University of Nebraska, created to aid the University Chancellor in making budget reduction recommendations to the Board of Regents, were part of the management structure of the University as opposed to legislative or quasi-legislative bodies. On that basis, we determined that such committees were not subject to the Public Meetings Statutes. In a similar fashion, it seems to us that the Board at issue in this

case is part of the management structure of the Omaha Mayor's office as opposed to being a legislative or quasi-legislative body. Therefore, we do not believe that the Board is subject to the Public Meetings Statutes as they are currently drafted. If you wish a contrary result, you may want to consider clarifying legislation.

Sincerely yours,

DON STENBERG
Attorney General

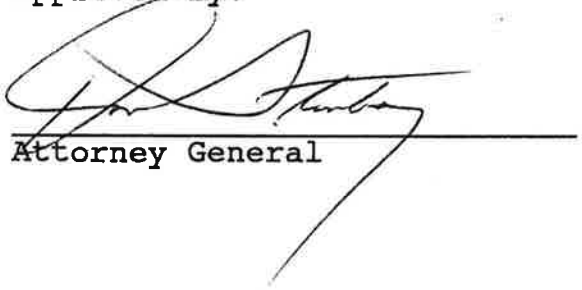


Dale A. Comer
Assistant Attorney General

05-29-14.op

cc: Patrick J. O'Donnell
Clerk of the Legislature

Approved by:



Attorney General