

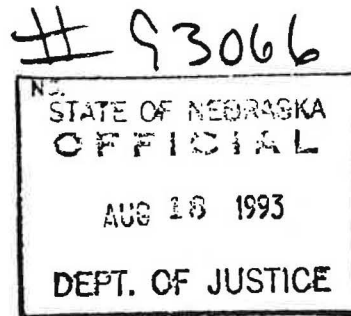


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DATE: August 17, 1993

SUBJECT: Statutory Interpretation; Neb. Rev. Stat. §§ 49-1407 and 49-1408 and Limited Liability Companies

REQUESTED BY: Dannie Trautwein, Director
Nebraska Accountability and Disclosure Commission

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

You have inquired whether the term "member" in Neb. Rev. Stat. § 49-1408 as amended by LB 121 of the 1993 legislative session refers to a member of any entity or only a member of a limited liability company for purposes of determining business associations.

Sections 304 and 305 of LB 121 of the 1993 legislative session amended the definition of business as found in Neb. Rev. Stat. § 49-1407 and business with which the individual is associated as found in Neb. Rev. Stat. § 49-1408. As amended, Neb. Rev. Stat. § 49-1407 reads, "[b]usiness shall mean any corporation, partnership, limited liability company, sole proprietorship, firm, enterprise, franchise, association, organization, self employed individual, holding company, joint-stock company, receivership, trust, activity, or entity." As amended, Neb. Rev. Stat. § 49-1408 reads:

Business with which the individual is associated or business association shall mean a business: (1) In which the individual is a partner, member, director, or officer; or (2) in which the individual or a member of the individual's immediate family is a stockholder of closed corporation stock worth one thousand dollars or

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more at fair market value or which represents more than a five percent equity interest, or is a stockholder of publicly traded stock worth ten thousand dollars or more at fair market value or which represents more than ten percent equity interest.

Your concern is based on the fact that Neb. Rev. Stat. §§ 49-1407 and 49-1408 are definitions relied upon in determining if certain public officials or public employees have a conflict of interest under the accountability and disclosure statutes. You note that the legislative history of LB 121 indicates that immediately prior to final reading of the bill, Legislator Douglas Kristensen stated, "I here want to lay legislative history that any effort to expand that definition [of member] beyond a member of a limited liability company would be a misreading of this statute and should not be used as the basis for any expansion of the political accountability and disclosure rules and regulations or requirements for the filing of conflicts. . . ." Legislative History, May 27, 1993, p. 6753.

Legislative history is used by the courts, when appropriate, to aid in understanding legislation. The Nebraska Supreme Court has ruled on numerous occasions:

A statute is not to be read as if open to construction as a matter of course. Where the words of a statute are plain, direct, and unambiguous, no interpretation is needed to ascertain the meaning. In the absence of anything to indicate the contrary, words must be given their ordinary meaning. It is not within the province of a court to read a meaning into a statute that is not warranted by the legislative language. Neither is it within the province of a court to read anything plain, direct and unambiguous out of a statute.

Gillam v. Firestone Tire & Rubber Co., 214 Neb. 414, 418, 489 N.W.2d 289, 292 (1992). See also *County of Douglas v. Board of Regents*, 210 Neb. 573, 577-78, 216 N.W.2d 62, 65 (1982).

The Nebraska Supreme Court has further determined that "whether the words of a statute are ambiguous is a question of law for the court." *Weiner v. State*, 214 Neb. 404, 407, 333 N.W.2d 915, 917 (1983); *Hill v. City of Lincoln*, 213 Neb. 517, 330 N.W.2d 471 (1983).

A general rule of statutory construction is that one should not adhere to the ambiguity rule when it is obvious that the result reached would clearly distort the legislative purposes. Sutherland Stat. Const. § 48.01 at p. 302 (5th Ed.). Guidance in interpreting statutory meaning can also be found in *National R. R. Passenger*


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Corporation v. National Association of R. R. Passengers, 94 S.Ct. 690 (1974), in which the United States Supreme Court determined that "even the most basic general principles of statutory construction must yield to clear contrary evidence of legislative intent." (Citation omitted.) 94 S.Ct. at 693. In the instant case, Legislator Kristensen, one of the original introducers of LB 121, stated on the record before final reading of the bill what the clear legislative intent of the use of the word "member" is as it relates to accountability and disclosure statutes and regulations. Therefore, it is our interpretation that "member" as used in Neb. Rev. Stat. §§ 49-1407 and 49-1408, as amended by LB 121, applies only to members of limited partnership companies.

Because ambiguity is a question of law for the court, this office cannot guarantee that the courts of this state would look beyond the words of the statute to the legislative history nor can we guarantee that they would reach the same conclusion. Therefore, it is our recommendation that the Legislature introduce legislation to make this interpretation clear on the face of the statute, as the legislative history of LB 121 indicates that Legislator Kristensen suggested to his fellow members of the Legislature.

Sincerely,

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Attorney General


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28-03-14.op

APPROVED:


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