

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509

ROBERT M. SPIRE
Attorney General
A. EUGENE CRUMP
Deputy Attorney General

February 19, 1986

FEB 21 1986

Carol Stitt
Executive Director
State Foster Care Review Board
Box 94952
Lincoln, Nebraska 68509-4952

Dear Carol:

This is in response to your two letters of January 29, 1986, and February 7, 1986, in which you asked eight specific questions concerning our opinion as to the application of the Public Meetings Law to the Foster Care Review Board.

1. Do the State Foster Care Review Board's meetings fall under the open meetings law?

Yes. The Board is a public body under the definitions in 84-1409 and is therefore, required to be open pursuant to 84-1408.

2. Does the State Board have to advertise each State Board meeting in the newspaper?

The Board does not have to advertise each meeting in the newspaper. 84-1411 provides that each public body shall give reasonable advanced publicized notice of time and place of each meeting by a method designated by each public body.

3. Is posting the date of a State Board meeting and the agenda of the meeting in the State Board's office on a bulletin board in public view sufficient to comply with the open meetings law? How far in advance must this be done?

No. The basis for our negative answer is Pokorny v. City of Schuyler, 202 Neb. 334 (1979), where it was held that notice of a special meeting of a city council posted in three public places at 10:00 p.m. on a day preceding the meeting is not reasonable advance publicized notice of the meeting as required by applicable statute, 84-1411. The court did not comment on

L. Jay Bartel
John M. Boehm
Dale D. Brodkey
Martel J. Bundy
Janie C. Castaneda

Dale A. Comer
Laura L. Freppel
Lynne R. Fritz
Ruth Anne E. Galter
Yvonne E. Gates

Jill Gradwohl
Calvin D. Hansen
Royce N. Harper
William L. Howland
Marilyn B. Hutchinson

Mel Kammeriohr
Sharon M. Lindgren
Charles E. Lowe
Harold I. Mosher
Bernard L. Packett

Terry R. Schaaf
LeRoy W. Sievers
Mark D. Starr
John R. Thompson
Linda L. Willard

propriety of posting the notice in three public places, but it would be reasonable to infer that had the court felt the placement was not adequate, it would have said so.

Your question is whether a posting of the date and agenda of the meeting on a bulletin board in public view in the State Boards Office sufficient for compliance. We would be suspect of a posting that is limited to the environs of the State Board offices.

4. Can the chair and vice-chair & secretary serve as a contact for the Executive Director to answer questions between meetings? The Executive Director is hired by the Board and responsible to it.

Yes, the chair, vice-chair, and secretary can serve as a contact for the Executive Director to answer questions between meetings. 43-1302 provides that the state board shall employ such persons as are necessary to aid it in carrying out its duties. As an employee of the board, it would be reasonable that the Executive Director would contact individual members of the Board on day to day administrative decisions. 43-1303 sets out the duties of the Board and it would be necessary that overview and policy decisions be made by the Board as a body. However, this would not prohibit the Executive Director from the necessary liaison with individual members of the Board.

5. Can the State Board go into executive session for any other reason than to discuss personnel issues, for example to review cases of children in foster care?

Yes, the Board may go into executive (closed) session to review cases of children in foster care. 84-1410 provides for closed sessions for the prevention of needless injury to the reputation of an individual. Further, confidentiality of records and information regarding foster children is mandated under 43-1303.

6. If a visitor is attending a State Board meeting and the Board is discussing legislative strategy, is it appropriate to go into executive session?

In our opinion, it would not be appropriate to go into executive session to discuss legislative strategy. Although 84-1410 permits closed sessions for such reasons as (a) strategy sessions with respect to collective bargaining, real estate purchases or litigation; (b) discussion on security; or (c) criminal investigations, it would not appear that legislative strategy would have a similar need for secrecy. In Pokorny v. City of Schuyler, supra, the court said, "There is nothing in the law that requires negotiations for the

purchase of land to be conducted at open meetings, but deliberations of the council as to whether an offer to purchase should be made is action that should be taken at open meeting."

Further, it should be noted that in Grien v. Board of Education of the School District of Fremont, 216 Neb. 158 (1984), the Supreme Court stated that if a public body is uncertain about type of session to be conducted, open or closed, such meeting should be held in presence of the public, in light of policy of openness promoted by the public meetings law.

7. The Department of Social Services is currently requesting information as to who makes what decision . . . the Executive Director, the Executive Committee (chair and vice-chair), or the full State Board. Are there any guidelines as to how much information must be shared with another agency?

As stated in answer to question #4, 43-1303 sets out the duties of the Board and it would be necessary that overview and policy decisions be made by the Board as a body. However, this would not prohibit the Executive Director from contacting individual members of the board in the handling of day to day administrative matters.

In regard to any guidelines as to how much information shall be shared with another agency, 84-1413(4) provides that the minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection and 84-1413(5) provides that the minutes shall be written and available within 10 days.

8. Does the Executive Director of a State Agency have the authority to conduct lobbying efforts on behalf of the agency, organize testimony for legislative hearings, and make contacts with State Senators?

The Executive Director of a State Agency does have the authority to conduct lobbying efforts on behalf of the agency, organize testimony for legislative hearings, and make contact with State Senators.

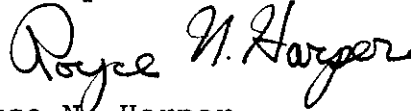
49-1434(3)(a) states that a principal or lobbyist shall not include a public official or employee of a branch of a state government, except the University of Nebraska, or an elected official of a political subdivision who is acting in the course or scope of his or her office or employment. Thus, the Executive Director would not be lobbying for another person or entity as defined in the Political Accountability and Disclosure Act and would not be subject to the registration provisions of 49-1480. As an employee of a State Agency, the scope of employment of the Executive Director is determined by the Agency. If the agency or board directs or authorizes the Executive Director to conduct lobbying efforts on its behalf,

Carol Stitt
February 19, 1986
Page -4-

we cannot see how the Director could or should be prohibited from doing so.

Sincerely,

ROBERT M. SPIRE
Attorney General

A handwritten signature in cursive script that reads "Royce N. Harper". The signature is written in dark ink and is positioned above the typed name of the signatory.

Royce N. Harper
Assistant Attorney General

RNH/kb