

ARTICLE 14

PUBLIC MEETINGS

Section.	Section.
84-1401 to 84-1406. Repealed.	conferencing authorized; emergency meeting without notice; appearance before public body.
84-1407. Act, how cited.	84-1412. Meetings of public body; rights of public; public body; powers and duties.
84-1408. Declaration of intent; meetings open to public.	84-1413. Meetings; minutes; roll call vote; secret ballot; when.
84-1409. Terms, defined.	84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.
84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.	
84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone	

§§ 84-1401 to 84-1406. **Repealed.** Laws 1975, LB 325, § 11.

§ 84-1407. **Act, how cited.**

Sections 84-1407 to 84-1414 shall be known and may be cited as the Open Meetings Act.

Source: Laws 2004, LB 821, § 34.

Editor's notes.

Former § 84-1407 was repealed by Laws 1975, LB 325, § 11.

§ 84-1408. **Declaration of intent; meetings open to public.**

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

Source: Laws 1975, LB 325, § 1; Laws 1996, LB 900, § 1071; Laws 2004, LB 821, § 35.

Effect of amendments.

Laws 2004, LB 821, effective July 16, 2004,

substituted "the Open Meetings Act" for "sections 84-1408 to 84-1414 and 85-104" in the second paragraph.

JUDICIAL DECISIONS

ANALYSIS

Construction.
Applicability.
Discovery.
Good faith.
Notice.
Recess.
Violation.

Construction.

Where a public body is required to hold open

meetings under this section, and does not meet the requirements under Neb. Rev. Stat. § 84-1410 to hold a closed session, the closing of a session must meet the requirements of Neb. Rev. Stat. § 84-1411. *Steenblock v. Elkhorn Tp. Bd.*, 245 Neb. 722, 515 N.W.2d 128 (1994).

Applicability.

Although residents of a school district filed a timely claim against the school district under the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414, the relief they sought

was invalidation of election results, and the only statutory means for invalidating an election was found in Neb. Rev. Stat. §§ 32-1101 through 32-1117, and that claim was untimely. *Pierce v. Drobný*, 2010 Neb. LEXIS 4, 279 Neb. 251, 777 N.W.2d 322 (2010).

Where a sheriff's deputy claimed that the board of county commissioners conducted an unlawful meeting, which led to his termination, the court held that even if the complaint could be construed to allege a deprivation of the deputy's civil rights under the public meetings law in Neb. Rev. Stat. § 84-1408, an action could not be brought against the county under Neb. Rev. Stat. § 20-148; nor did § 20-148 apply to individuals acting in their capacities as public officials. *Buzek v. Pawnee County*, 2002 U.S. Dist. LEXIS 10647, 207 F. Supp. 2d 961 (D. Neb. 2002).

The Nebraska public meetings law, Neb. Rev. Stat. §§ 84-1408 to 84-1414, does not apply to judicial nominating commissions; any action by such a commission need not conform to the requirements of the public meetings law because commission meetings did not involve public policy. *Marks v. Judicial Nominating Comm'n*, 236 Neb. 429, 461 N.W.2d 551 (1990).

This article was not applicable to an election of the county committee for school district reorganization. The school district reorganization committee was not a "governing" body of any of the units or agencies embraced within the ambit of the article. *State ex rel. Medlin v. Choat*, 187 Neb. 689, 193 N.W.2d 739 (1972).

Discovery.

In a corporation's suit against a natural resources district for alleged violations of Nebraska's Open Meetings Act, Neb. Rev. Stat. § 84-1407 et seq., the trial court erred in granting the corporation's motion to compel discovery as there was evidence that some of the communications at issue might have been subject to the attorney-client privilege. However, the Act did not create an absolute privilege for all communications occurring while a public body was in a closed session. *State ex rel. Upper Republican Natural Res. Dist. v. Honorable Dist. Judges*, 2007 Neb. LEXIS 31, 273 Neb. 148, 728 N.W.2d 275 (2007).

Good faith.

In civil actions good faith or good intention on the part of the public body is irrelevant to the

question of compliance with the provisions of this law authorizing a closed session. *Grein v. Board of Educ.*, 216 Neb. 158, 343 N.W.2d 718 (1984).

Notice.

Any person who has notice of a meeting and attends the meeting should be, and is, required to object specifically to the lack of public notice at the meeting, or the person will be held to have waived his right to object on that ground at a later date; a timely objection will permit the public body to remedy its mistake promptly and defer formal action until the required public notice can be given. *Otey v. State*, 240 Neb. 813, 485 N.W.2d 153 (1992).

Recess.

There was no violation of the Nebraska open meeting law, where at a recess taken during a lawful public meeting called by the board of county commissioners of Lancaster County, certain of the commissioners and others present, retired to an adjoining room, the door to which was open at all times, with no one being excluded, and an informal conversation was had by the commissioners and others with reference to an item of business on the agenda of the meeting, but where no formal action or vote was taken thereon until the board of commissioners reconvened in regular session following the recess. *Copple v. City of Lincoln*, 202 Neb. 152, 274 N.W.2d 520 (1979).

Violation.

Once a meeting has been declared void pursuant to Nebraska's public meetings law, board members are prohibited from considering any information obtained at the illegal meeting. *Alderman v. County of Antelope*, 2002 Neb. App. LEXIS 252, 11 Neb. Ct. App. 412, 653 N.W.2d 1 (2002).

An agenda item stating only "work order reports," which resulted in a public body approving a \$47 million, three-year construction project traversing private land for nearly 100 miles with a major power transmission line, violated the notice requirements for an agenda under the public meetings laws. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998), *aff'd*, 256 Neb. 1, 588 N.W.2d 589 (1999).

UNPUBLISHED OPINIONS

Applicability.

In a citizen's action against several county entities and personnel, the trial court did not err in granting summary judgment in favor of the County as the citizen made no specific argument relating to his complaints and how certain events, if they occurred, were violations of Nebraska's Open Meetings Act, Neb. Rev. Stat. § 84-1407 et seq. Based on the lack of specificity in the citizen's argument and on the

main purpose of the Act, the citizen's allegations regarding the sale of certain equipment, the citizen's request to receive information in the sheriff's file, and the clerk's raising copy prices were not relevant to violations of the Act; while these allegations might have involved violations of other statutory law, they were not appropriately addressed in the context of the Open Meetings Act. *Rinne v. Pawnee County Bd.*, 2007 Neb. App. LEXIS 54 (2007).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

Legislative intent.
 Applicability.
 Closed sessions.
 Radioactive waste commission.
 Violations.

Legislative intent.

A meeting held in San Antonio, Texas by the board of examiners in medicine and surgery may not be a technical violation of the statute, but, as a practical matter, it would seem to contravene the intent to allow Nebraska citizens to "exercise their democratic privilege of attending and speaking at meetings of public bodies." However, the mere fact that the meeting was held in Texas, rather than in Nebraska, does not automatically constitute a violation of the Nebraska Public Meetings Law. 1985 Op. Att'y Gen. No. 7.

Applicability.

County hospital authorities are subject to the public meeting requirements of § 84-1408 et seq. 1997 Op. Att'y Gen. No. 12.

Department of education case hearings are quasi-judicial in nature and are not subject to the requirements of the public meeting statutes. 1999 Op. Att'y Gen. No. 46.

The provisions of this law apply to informational and educational meetings of governmental bodies. 1992 Op. Att'y Gen. No. 43.

The Legislature is not subject to the requirements of the Public Meetings Law. 1985 Op. Att'y Gen. No. 120.

Closed sessions.

This law allows a closed session only if the public body identifies the closed session's purpose and votes in open meeting to hold the closed session. 1989 Op. Att'y Gen. No. 63.

Where the Regents identified the purpose of a closed session as an evaluation of job performance of Dr. R, and Dr. R did not request open sessions, and the approval of arrangements with Dr. R was made in open meeting, and demonstrated that the closed session actually was a personnel matter within the statute's exception allowing a closed session, the closed meeting was proper. 1989 Op. Att'y Gen. No. 63.

Radioactive waste commission.

The central low-level radioactive waste commission is not included within this law or the Administrative Procedures Act of the Nebraska Statutes. 1989 Op. Att'y Gen. No. 8.

The Veterans' Advisory Commission exercises a judicial function when it hears an appeal from a veteran on a claim for aid. Consequently, since the hearings are judicial proceedings, they are not subject to the provisions of the Open Meetings Act. 2005 Op. Att'y Gen. No. 05014.

Violations.

Action taken in violation of this law is invalid. 1987 Op. Att'y Gen. No. 19.

RESEARCH REFERENCES

University of Nebraska Law Review.

The incidental matters rule and judicially created exceptions to the Nebraska Public Meetings Law: A call to the Legislature in *Meyer v. Board of Regents*, 510 N.W.2d 450 (Neb. App. 1993). 73 Neb L. Rev. 456 (1994).

Nebraska unicameral rule 3, section 15: To whom must the door be open. 64 Neb L. Rev. 282 (1985).

§ 84-1409. Terms, defined.

For purposes of the Open Meetings Act, unless the context otherwise requires:

- (1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) 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, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and
- (b) Public body does not include (i) subcommittees of such bodies unless a

quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders;

(2) Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body; and

(3) Videoconferencing means conducting a meeting involving participants at two or more locations through the use of audio-video equipment which allows participants at each location to hear and see each meeting participant at each other location, including public input. Interaction between meeting participants shall be possible at all meeting locations.

Source: Laws 1975, LB 325, § 2; Laws 1983, LB 43, § 1; Laws 1989, LB 429, § 42; Laws 1989, LB 311, § 14; Laws 1992, LB 1019, § 124; Laws 1993, LB 635, § 1; Laws 1996, LB 1044, § 978; Laws 1997, LB 798, § 37; Laws 2004, LB 821, § 36; Laws 2007, LB 296, § 810; Laws 2011, LB 366, § 2.

Effective date: August 27, 2011

Effect of amendments.

The 2011 amendment added "except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act" in (1)(b)(i).

Laws 2007, LB 296, effective March 16, 2007, and operative July 1, 2007, deleted former (1)(b)(iii) which read: "the Policy Cabinet created in section 81-3009" and made stylistic changes.

Laws 2004, LB 821, effective July 16, 2004, in the introductory paragraph, substituted "the Open Meetings Act" for "sections 84-1408 to 84-1414"; rewrote (1); and made stylistic changes.

JUDICIAL DECISIONS

ANALYSIS

Meeting.
Public body.

Meeting.

Informal tour and dinner was not a public meeting under Neb. Rev. Stat. § 84-1409(2) for which no public notice was given, as attending city council members and a mayor specifically testified that at the dinner they did not discuss or receive information associated with a redevelopment plan and contract and that they did not hold any hearing, make policy, or take any formal action on behalf of the city council. *Schauer v. Grooms*, 2010 Neb. LEXIS 103, 280 Neb. 426, 786 N.W.2d 909 (2010).

Informational sessions in which the Nebraska environmental control council hears reports are briefings and are therefore meetings covered under subsection (2) of this section. *Johnson v. Nebraska Env'tl. Control Council*, 2 Neb. App. 263, 509 N.W.2d 21 (1993).

Public body.

In an annexation dispute, where no more than three of a metropolitan city's council members attended any informational sessions, these subgroups did not constitute a public body. Further, none of the subgroups could have taken formal action, and therefore the city's annexation ordinance did not violate the Open Meetings Act. *City of Elkhorn v. City of Omaha*, 2007 Neb. LEXIS 7, 272 Neb. 867, 725 N.W.2d 792 (2007).

Public meeting law applies to governing bodies of all agencies of the executive branch and, therefore, applies to the Nebraska environmental control council. *Johnson v. Nebraska Env'tl. Control Council*, 2 Neb. App. 263, 509 N.W.2d 21 (1993).

A county agricultural society is a public body subject to the provisions of the public meetings law. *Nixon v. Madison County Agric. Soc'y*, 217 Neb. 37, 348 N.W.2d 119 (1984).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

Agricultural societies.
Board of parole.
Conference telephone calls.
Extension service.
Public body.

Agricultural societies.

County agricultural societies are subject to both the public records and the public meetings statutes. 1991 Op. Att'y Gen. No. 7.

Board of parole.

Board of parole is a public body for purposes of this law. 1993 Op. Att'y Gen. No. 65.

Parole hearings must be conducted in public, and, the actual decision process of the Board concerning a particular offender's parole is subject to this law, and should be conducted in public. 1993 Op. Att'y Gen. No. 65.

Section 83-1,111 does allow private parole reviews, the provisions of the public meetings statutes notwithstanding. 1993 Op. Att'y Gen. No. 65.

Conference telephone calls.

This statute does not authorize the use of telephone conference calls for non-emergency meetings of a public body. 1992 Op. Att'y Gen. No. 19.

Extension service.

County extension services are public bodies subject to the provisions of the public meetings law. 1984 Op. Att'y Gen. No. 219.

Public body.

The State Fair Board is not a public body that is subject to the Public Meetings Statutes. 2001 Op. Att'y Gen. No. 01038.

The group making the appointment to fill a vacancy on a county board of commissioners under § 32-567(3) constitutes a public body as defined by § 84-1409 and is therefore subject to the open meeting laws. 1997 Op. Att'y Gen. No. 50.

The mayor's citizen review board is not a public body within the meaning of this section, as it is a part of the management structure of the mayor's office as opposed to being a legislative or quasi-legislative body. 1995 Op. Att'y Gen. No. 14.

§ 84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(b) Discussion regarding deployment of security personnel or devices;

(c) Investigative proceedings regarding allegations of criminal misconduct;

(d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting;

(e) For the Community Trust created under section 81-1801.02, discussion regarding the amounts to be paid to individuals who have suffered from a tragedy of violence or natural disaster; or

(f) For public hospitals, governing board peer review activities, professional review activities, review and discussion of medical staff investigations or disciplinary actions, and any strategy session concerning transactional negotiations with any referral source that is required by federal law to be conducted at arms length.

Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.

(2) The vote to hold a closed session shall be taken in open session. The

entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

(3) Any member of any public body shall have the right to challenge the continuation of a closed session if the member determines that the session has exceeded the reason stated in the original motion to hold a closed session or if the member contends that the closed session is neither clearly necessary for (a) the protection of the public interest or (b) the prevention of needless injury to the reputation of an individual. Such challenge shall be overruled only by a majority vote of the members of the public body. Such challenge and its disposition shall be recorded in the minutes.

(4) Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

(5) The act does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

Source: Laws 1975, LB 325, § 3; Laws 1983, LB 43, § 2; Laws 1985, LB 117, § 1; Laws 1992, LB 1019, § 125; Laws 1994, LB 621, § 1; Laws 1996, LB 900, § 1072; Laws 2004, LB 821, § 37; Laws 2004, LB 1179, § 1; Laws 2006, LB 898, § 1; Laws 2011, LB 390, § 29; Laws 2012, LB 995, § 17.

Effective date: April 6, 2012

Editor's notes.

Laws 2012, LB 995, § 18, effective and operative April 6, 2012, provides that "If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions"

Effect of amendments.

The 2012 amendment added (1)(f) and made related changes.

The 2011 amendment added (1)(e) and made related changes.

Laws 2006, LB 898, effective July 14, 2006, in (1), inserted the second sentence; and rewrote (2).

Laws 2004, LB 821, effective July 16, 2004, in (4), substituted "the Open Meetings Act" for "sections 79-317, 84-1408 to 84-1414, or 85-104" and "the act" for "such sections" and in (5), substituted "The act does" for "Such sections shall."

Laws 2004, LB 1179, effective July 16, 2004, inserted "e-mail, fax," and "other" in (4).

JUDICIAL DECISIONS

ANALYSIS

Construction.
Legislative intent.
Closure.
Discovery.
Individual interest.
Public interest.

Construction.

In an annexation dispute between two cities, where the smaller city challenged the annexation ordinance of the other city by arguing that under Neb. Rev. Stat. § 84-1410(4) no public body could designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act, the metropolitan city, which sought to annex the smaller city, did not attempt to circumvent the Act. The metropolitan city gave the public access to the same information as the council received and an opportunity to be heard; informational sessions of less than a quorum of the metropolitan city council members did not constitute a public meeting under the Act. *City of Elkhorn v. City of Omaha*, 2007 Neb. LEXIS 7, 272 Neb. 867, 725 N.W.2d 792 (2007).

Provisions permitting closed sessions and exemption from openness of meeting must be narrowly and strictly construed. *Grein v. Board of Educ.*, 216 Neb. 158, 343 N.W.2d 718 (1984).

Legislative intent.

Nebraska public meeting law reflects the Legislature's judgment of the appropriate balance between the public's interest in open discussion of governmental issues and the rights of individuals, such as state employees, to have their performance as employees considered in private if they so choose. *Meyer v. Board of Regents*, 4 Neb. App. 14, 510 N.W.2d 450 (1993).

Closure.

There is no violation of the public meeting

law when the subject of the closed session falls within one of the express exclusions of this section. *Meyer v. Board of Regents*, 4 Neb. App. 14, 510 N.W.2d 450 (1993).

Discovery.

In a corporation's suit against a natural resources district for alleged violations of Nebraska's Open Meetings Act, Neb. Rev. Stat. § 84-1407 et seq., the trial court erred in granting the corporation's motion to compel discovery as there was evidence that some of the communications at issue might have been subject to the attorney-client privilege. However, the Act did not create an absolute privilege for all communications occurring while a public body was in a closed session. *State ex rel. Upper Republican Natural Res. Dist. v. Honorable Dist. Judges*, 2007 Neb. LEXIS 31, 273 Neb. 148, 728 N.W.2d 275 (2007).

Individual interest.

Prevention of needless injury to an individual's reputation as a basis for a closed session was not established where lowest bidder made an error in computing his bid, and this exemption from an open session was not available to the board. *Grein v. Board of Educ.*, 216 Neb. 158, 343 N.W.2d 718 (1984).

Public interest.

The public interest is the interest shared by citizens in general and by the community at large concerning pecuniary or legal rights and liabilities. *Grein v. Board of Educ.*, 216 Neb. 158, 343 N.W.2d 718 (1984).

School board was not entitled to adjourn to a closed session based upon "protection of the public interest" contemplated by this section where the session was held to discuss whether to accept the second lowest bid, or the lowest bid which had been made in error. *Grein v. Board of Educ.*, 216 Neb. 158, 343 N.W.2d 718 (1984).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

Closed sessions proper.
County hospital authority.

Closed sessions proper.

The environmental control council could convene a closed meeting for the purpose of preparing a list of candidates to fill the position of director of the department of environmental control only where it is clear from discernible facts and circumstances that in each instance such a closed session is necessary for the pro-

tection of the public interest or for the prevention of needless injury to the reputation of an individual, and if such individual has not requested a public meeting. 1983 Op. Att'y Gen. No. 11.

Where action is taken under § 68-1008, by the county welfare board, the meeting may be closed under this section. 1981 Op. Att'y Gen. No. 162.

County hospital authority.

County hospital authorities are subject to the public meeting requirements of § 84-1408 et seq. 1997 Op. Att'y Gen. No. 12.

§ 84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than one county in this state, of the governing body of a public power and irrigation district having a chartered territory of more than one county in this state, of a board of an educational service unit, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, or of a community college board of governors may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

- (a) Reasonable advance publicized notice is given;
- (b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;
- (c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;
- (d) At least one member of the state entity, advisory committee, board, or governing body is present at each site of the videoconference or telephone conference; and
- (e) No more than one-half of the state entity's, advisory committee's, board's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of a board of an educational service unit, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body

of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, of a community college board of governors, of the governing body of a public power district, or of the governing body of a public power and irrigation district may be held by telephone conference call if:

(a) The territory represented by the educational service unit, community college board of governors, public power district, public power and irrigation district, or member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which an educational service unit board member, a member of a community college board of governors, a member of the governing body of a public power district, a member of the governing body of a public power and irrigation district, or a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, or entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the educational service unit board, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than one hour; and

(h) No more than one-half of the board's, governing body's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that a governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or

telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

Source: Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2; Laws 2007, LB 199, § 9; Laws 2009, LB 361, § 2; Laws 2012, LB 735, § 1.

Effective date: July 19, 2012

Cross references.

Intergovernmental Risk Management Act, see § 44-4301.

Interlocal Cooperation Act, see § 13-801.

Joint Public Agency Act, see § 13-2501.

Municipal Cooperative Financing Act, see § 18-2401.

Editor's notes.

Laws 1999, LB 87, § 101, effective August 28, 1999, provides: "If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions."

Effect of amendments.

The 2012 amendment, in the introductory language of (2), substituted "one county in this state, of the governing body of a public power and irrigation district having a chartered territory of more than one county in this state" for "fifty counties in this state" and added "or of a community college board of governors"; added "of a community college board of governors, of the governing body of a public power district, or of the governing body of a public power and irrigation district" in the introductory language of (3); added "community college board of governors, public power district, public power and irrigation district" in (3)(a); added "a member of

a . . . and irrigation district" in (3)(b); added "community college board of governors, governing body of the public power district, governing body of the public power and irrigation district" in (3)(c) and (3)(f); added "governing body's" preceding "entity's, or pool's" in the first paragraph of (3)(h); and made a related change.

The 2009 amendment added "of a board of an educational service unit" in the introductory language of (2); added "board" or variants in (2)(d), (2)(e), and (3)(h); added "a board of an educational service unit, of" in the introductory language of (3); added "educational service unit or" in (3)(a); added "an educational service unit board member or" in (3)(b); added "educational service unit board or" in (3)(c) and (3)(f); added "except that a governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing" in the first paragraph of (3)(h); and made stylistic changes.

Laws 2007, LB 199, effective September 1, 2007, in the introductory paragraph of (3), inserted "or the Municipal Cooperative Financing Act."

Laws 2006, LB 898, effective July 14, 2006, in (1), inserted the third sentence.

Laws 2004, LB 821, effective July 16, 2004, in (2)(e) and (3)(h), substituted "the Open Meetings Act" for "sections 84-1408 to 84-1414" and made stylistic changes.

Laws 2004, LB 1179, effective July 16, 2004, in second paragraph of (2)(e), inserted "or conferencing by other electronic communication", in (3)(h), inserted "e-mails, faxes, or other electronic communication", and made stylistic changes.

JUDICIAL DECISIONS

ANALYSIS

Purpose.
Agenda.
Closure.
Defects.
Electors of township.
Emergency meetings.
Notice.

Sale of land.
Violation.
—Evidence.
—Found.
Waiver.

Purpose.

The purpose of this law is to insure that public policy is formulated at open meetings of

the bodies to which the law is applicable. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

Agenda.

There is no conflict between the notice contemplated in Neb. Rev. Stat. § 23-227 and the notice requirements of Neb. Rev. Stat. § 84-1411. The latter statute imposes an additional requirement concerning agenda items consistent with the general notice of meeting required by Neb. Rev. Stat. § 23-227. *State ex rel. Newman v. Columbus Twp. Bd.*, 2007 Neb. App. LEXIS 100, 15 Neb. Ct. App. 656, 735 N.W.2d 399 (2007).

Appellants were not entitled to a writ of mandamus requiring a township board to put into effect motions passed by the electors of the township at an annual meeting; the actions taken by the electors at the annual meeting violated the agenda requirements of the Open Meetings Act because the electors voted upon items that were not included in the agenda, no emergency was declared, and the electors made no effort to modify the agenda to include the items upon which they voted. *State ex rel. Newman v. Columbus Twp. Bd.*, 2007 Neb. App. LEXIS 100, 15 Neb. Ct. App. 656, 735 N.W.2d 399 (2007).

Closure.

Where a public body is required to hold open meetings under this section, and does not meet the requirements under this section to hold a closed session, the closing of a session must meet the requirements of subsection (3) (now see subsection (5)) of this section. *Steenblock v. Elkhorn Tp. Bd.*, 245 Neb. 722, 515 N.W.2d 128 (1994).

Defects.

Any defect in the call for a special meeting of the council of a city of the second class is immaterial if all members of the council are present and participate in the meeting without objection. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

Although technically deficient, agenda items alone did not destroy the validity of action taken at council meetings. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

Electors of township.

Electors of a township, when assembled at the annual meeting, constitute a governing body of the township. When the electors come together at the annual meeting, they become a governing body of a political subdivision and are thus a public body subject to the requirements of the Open Meetings Act. *State ex rel. Newman v. Columbus Twp. Bd.*, 2007 Neb. App. LEXIS 100, 15 Neb. Ct. App. 656, 735 N.W.2d 399 (2007).

Emergency meetings.

County board of commissioners (BOC) did not substantially violate the Nebraska Open

Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414, by taking up and acting upon nonagenda items under the guise of emergencies under Neb. Rev. Stat. § 84-1411: a personnel letter, a homeland security resolution, a grant for pagers, and a road resolution. The following were not appropriate emergency items addressed by the BOC: transfer of funds, a letter concerning wind energy, a waiver of notification, and a constitution with cooperative extension service; the actions taken on these matters were void. *Wolf v. Grubbs*, 2009 Neb. App. LEXIS 11, 17 Neb. Ct. App. 292, 759 N.W.2d 499 (2009).

Complete minutes of an emergency meeting specifying the nature of the emergency and any formal action taken at the meeting must be made available to the public by the end of the next regular working day. *Meyer v. Board of Regents*, 4 Neb. App. 14, 510 N.W.2d 450 (1993).

Notice.

Where the county board of commissioners and county board of equalization (BOE) published minutes from the July 5 meeting stating that the next meeting of the BOE would be held on July 12, the minutes of the prior meeting did not meet the technical requirements of Neb. Rev. Stat. § 84-1411 for meeting notice; the minutes did not give the place and time of the future meeting, nor was there any mention of the agenda for the future meeting. Because the meeting occurred within the 120 days prior to filing of the suit challenging the BOC's and BOE's alleged violations of Nebraska's Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414, the entire meeting of July 12 was void and board members were prohibited from considering any information obtained at the illegal meeting of July 12 in accordance with Neb. Rev. Stat. § 84-1414. *Wolf v. Grubbs*, 2009 Neb. App. LEXIS 11, 17 Neb. Ct. App. 292, 759 N.W.2d 499 (2009).

Because Neb. Rev. Stat. § 84-1411 requires notice of "each" meeting, notice of recessed and reconvened meetings must be given in the same fashion as the original meeting. Where the county board of equalization held a meeting that a reconvening and continuation of another meeting, no separate notice was published; the entire meeting was void and board members were prohibited from considering any information obtained at the illegal meeting in accordance with Neb. Rev. Stat. § 84-1414. *Wolf v. Grubbs*, 2009 Neb. App. LEXIS 11, 17 Neb. Ct. App. 292, 759 N.W.2d 499 (2009).

When a metropolitan city passed an ordinance to annex adjacent land, the ordinance was not invalid because the city met the requirements of Neb. Rev. Stat. § 84-1411 when it passed the ordinance. The statute's 24-hour requirement was directed only at alterations. *City of Elkhorn v. City of Omaha*, 2007 Neb. LEXIS 7, 272 Neb. 867, 725 N.W.2d 792 (2007).

Where notice is required, a notice of a special meeting of a city council posted in three public places at 10:00 p.m., on the day preceding the meeting is not reasonable advance publicized notice of the meeting as required by this section. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

An agenda which gives reasonable notice of the matters to be considered at a meeting of a city council complies with this section. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

Notice that was not a "model of clarity," but that did inform the public of the subject of the meeting and possible action, complied with this section. *Banks v. Board of Educ.*, 202 Neb. 717, 277 N.W.2d 76 (1979).

Sale of land.

Negotiations for the purchase of land need not be conducted at an open meeting but deliberations of a city council as to whether an offer to purchase real estate should be made should take place in an open meeting. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

Violation.

—Evidence.

The trial court did not err in failing to find

violations of the Nebraska Public Meetings Law where the complainant taxpayer provided no dates when a quorum of board members allegedly met clandestinely to decide on business. *Rauert v. School Dist. 1-R*, 251 Neb. 135, 555 N.W.2d 763 (1996).

—Found.

An agenda item stating only "work order reports," which resulted in a public body approving a \$47 million, three-year construction project traversing private land for nearly 100 miles with a major power transmission line, violated the notice requirements for an agenda under the public meetings laws. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998), *aff'd*, 256 Neb. 1, 588 N.W.2d 589 (1999).

Waiver.

Any person who has notice of a public meeting and attends the meeting but fails to object at the meeting to the failure of the public body to give "publicized notice" of the meeting as required by this section waives his right to object at a later date to formal action taken at the meeting on the ground that the public body failed to give the notice required by the statute. *Alexander v. School Dist. No. 17*, 197 Neb. 251, 248 N.W.2d 335 (1976).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

Grievance appeal hearing.

Illustrative case.

Grievance appeal hearing.

Employee grievance appeal hearing conducted before a hearing officer designated by the state personnel board is not a "meeting" of a "public body" and therefore the publicized no-

tice requirement is not applicable to such proceedings. 1984 Op. Att'y Gen. No. 210.

Illustrative case.

Where various telephone conference meetings of the Nebraska equal opportunity commission (NEOC) did not comply with the requirements for an emergency meeting under subsection (4) (now subsection (5)), its actions on those occasions are void under § 84-1414(1). 1995 Op. Att'y Gen. No. 63.

§ 84-1412. Meetings of public body; rights of public; public body; powers and duties.

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies, and all or any part of a meeting of a public body, except for closed sessions called pursuant to section 84-1410, may be videotaped, televised, photographed, broadcast, or recorded by any person in attendance by means of a tape recorder, camera, video equipment, or any other means of pictorial or sonic reproduction or in writing.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, speaking at, videotaping, televising, photographing, broadcasting, or recording its meetings. A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require

that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(4) No public body shall, for the purpose of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.

(5) No public body shall be deemed in violation of this section if it holds its meeting in its traditional meeting place which is located in this state.

(6) No public body shall be deemed in violation of this section if it holds a meeting outside of this state if, but only if:

(a) A member entity of the public body is located outside of this state and the meeting is in that member's jurisdiction;

(b) All out-of-state locations identified in the notice are located within public buildings used by members of the entity or at a place which will accommodate the anticipated audience;

(c) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including making a telephone conference call available at an in-state location to members, the public, or the press, if requested twenty-four hours in advance;

(d) No more than twenty-five percent of the public body's meetings in a calendar year are held out-of-state;

(e) Out-of-state meetings are not used to circumvent any of the public government purposes established in the Open Meetings Act;

(f) Reasonable arrangements are made to provide viewing at other in-state locations for a videoconference meeting if requested fourteen days in advance and if economically and reasonably available in the area; and

(g) The public body publishes notice of the out-of-state meeting at least twenty-one days before the date of the meeting in a legal newspaper of statewide circulation.

(7) The public body shall, upon request, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting.

(8) Public bodies shall make available at the meeting or the in-state location for a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.

Source: Laws 1975, LB 325, § 5; Laws 1983, LB 43, § 4; Laws 1985, LB 117, § 2; Laws 1987, LB 324, § 5; Laws 1996, LB 900, § 1073; Laws 2001, LB 250, § 2; Laws 2004, LB 821, § 39; Laws 2006, LB 898, § 3; Laws 2008, LB 962, § 1.

Effective date: July 18, 2008

Effect of amendments.

The 2008 amendment added "nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda" in the first sentence of (3).

Laws 2006, LB 898, effective July 14, 2006, in (8), added the last two sentences.

Laws 2004, LB 821, effective July 16, 2004, in (1), substituted "the Open Meetings Act" for "sections 79-317, 84-1408 to 84-1414 and 85-104", in (4) and (6)(e), substituted "the Open Meetings Act" for "sections 84-1408 to 84-1414."

Laws 2001, LB 250, effective September 1, 2001, effective September 1, 2001, in (4), redesignated the second sentence as (5) and deleted the third sentence which read, "Except as provided in section 18-2438, no public body shall hold a meeting outside the State of Nebraska"; added (6); redesignated former (5) as (7) and former (6) as (8); in (8), inserted "or the in-state location for a telephone conference call or videoconference."

JUDICIAL DECISIONS

ANALYSIS

Violation.
—Evidence.
—Objections.

Violation.**—Evidence.**

The trial court did not err in failing to find violations of the Nebraska Public Meetings Law where the complainant taxpayer provided no dates when a quorum of board members

allegedly met clandestinely to decide on business. *Rauert v. School Dist. 1-R*, 251 Neb. 135, 555 N.W.2d 763 (1996).

—Objections.

To preserve an objection to a violation of the requirement that documents be made available at public meetings, a person who attends the meeting must not only object to the violation, but must make that objection to the public body or to a member of the public body. *Stoetzel & Sons v. City of Hastings*, 2003 Neb. LEXIS 47, 265 Neb. 637, 658 N.W.2d 636 (2003).

UNPUBLISHED OPINIONS

Applicability.

In a citizen's action against several county entities and personnel, the trial court did not err in granting summary judgment in favor of the County as the citizen made no specific argument relating to his complaints and how certain events, if they occurred, were violations of Nebraska's Open Meetings Act, Neb. Rev. Stat. § 84-1407 et seq. Based on the lack of specificity in the citizen's argument and on the

main purpose of the Act, the citizen's allegations regarding the sale of certain equipment, the citizen's request to receive information in the sheriff's file, and the clerk's raising copy prices were not relevant to violations of the Act; while these allegations might have involved violations of other statutory law, they were not appropriately addressed in the context of the Open Meetings Act. *Rinne v. Pawnee County Bd.*, 2007 Neb. App. LEXIS 54 (2007).

§ 84-1413. Meetings; minutes; roll call vote; secret ballot; when.

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a municipality, a county, a learning community, a joint entity created pursuant to the Interlocal Cooperation Act, a joint public agency created pursuant to the Joint Public Agency Act, or an agency formed under the Municipal Cooperative Financing Act which utilizes an electronic voting device which allows the yeas and nays of each member of such city council, village board, county board, or governing body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

Source: Laws 1975, LB 325, § 6; Laws 1978, LB 609, § 3; Laws 1979, LB 86, § 9; Laws 1987, LB 663, § 26; Laws 2005, LB 501, § 1; Laws 2009, LB 361, § 3.

Effective date: August 30, 2009

Cross references.

Interlocal Cooperation Act, see § 13-801.

Joint Public Agency Act, see § 13-2501.

Municipal Cooperative Financing Act, see § 18-2401.

Effect of amendments.

The 2009 amendment in the second sentence of (2), added "a county, a learning community, a

joint entity created pursuant to the Interlocal Cooperation Act, a joint public agency created pursuant to the Joint Public Agency Act, or an agency formed under the Municipal Cooperative Financing Act" and "county board, or governing body" and made related and stylistic changes.

Laws 2005, LB 501, effective September 4, 2005, added "except that cities . . . or emergency" in (5).

JUDICIAL DECISIONS

ANALYSIS

Construction.

Minutes.

Notice.

Record.

Vote.

Construction.

The statutory language of Neb. Rev. Stat. § 84-1414 indicates that it is the failure to make or take the vote in accordance with this section rather than the failure to record a properly taken vote which will result in a declaration of invalidity. *State ex rel. Schuler v. Dunbar*, 214 Neb. 85, 333 N.W.2d 652 (1983).

Minutes.

Where the county board of commissioners (BOC) published minutes for its June 7 meeting on June 23, minutes for the June 21 and 29 meetings were published on July 21; the BOC's failure to publish minutes within 10 working days was a violation of Neb. Rev. Stat. § 84-1413. However, a violation of Neb. Rev. Stat. § 23-122 is not a violation of the Nebraska Open Meetings Act; thus, the actions at those meetings were not void or voidable under Neb. Rev. Stat. § 84-1414. *Wolf v. Grubbs*, 2009 Neb. App. LEXIS 11, 17 Neb. Ct. App. 292, 759 N.W.2d 499 (2009).

Notice.

There is no requirement under Neb. Rev. Stat. § 84-1413 that a public body make a record of where notice was published or posted. Where county board of commissioners adopted a method of posting notice at the courthouse, the post office, and the county school, the court

could presume that the county clerk properly posted notice accordingly; the testimony from several witnesses that they did not happen to see the posted notices did not overcome the presumption that the county clerk posted the notices as required. *Wolf v. Grubbs*, 2009 Neb. App. LEXIS 11, 17 Neb. Ct. App. 292, 759 N.W.2d 499 (2009).

Record.

Subsection (2) of this section does not require the record to state that the vote was by rollcall, but requires only that the record show if and how each member voted. Neither does the statute set a time limit for recording the results of a vote, after which no corrections of the record can be made. *State ex rel. Schuler v. Dunbar*, 214 Neb. 85, 333 N.W.2d 652 (1983).

The provisions of subsection (2) providing: "the record shall state how each member voted, or if the member was absent or not voting," cannot be satisfied by a nunc pro tunc amendment showing the recording of the vote in the minutes was performed prior to the time the actual recording in the minutes took place. *State ex rel. Schuler v. Dunbar*, 208 Neb. 69, 302 N.W.2d 674 (1981).

Vote.

The statute requires that a proper vote be taken as a prerequisite to the validity of the action. It does not require that the proper vote be recorded as a separate condition of validity. If, in fact, the vote was properly taken, the failure to properly record it at the time it was done does not make the action void. *State ex rel. Schuler v. Dunbar*, 214 Neb. 85, 333 N.W.2d 652 (1983).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

Correction of minutes.

Minutes.

Correction of minutes.

An individual commissioner of the Nebraska equal opportunity commission, who wishes to challenge, amend, or correct the minutes from a previous commission meeting, may offer his/her own version of the minutes as a motion to

amend the minutes from a previous commission meeting. 1997 Op. Att'y Gen. No. 8.

As a general rule, a public body may, at a subsequent meeting, if no intervening rights of third persons have arisen, order the minutes or record of its own proceedings at a previous meeting to be corrected according to the facts, so as to make them speak the truth, although the record has once been approved. 1997 Op. Att'y Gen. No. 8.

Minutes.

Minutes for a closed session need not contain anything beyond the requirements set out in § 84-1410. 1998 Op. Att'y Gen. No. 45.

Although minutes of all matters discussed in a closed session are not required, this section does require that the minutes include (1) the vote of each member on the question of holding

a closed session, (2) the reason for the closed session, (3) the time when the closed session commenced and concluded, and (4) the result of any challenge to the continuation of the closed session. 1998 Op. Att'y Gen. No. 45.

Nothing in this section requires approval prior to publication of meeting minutes. 1981 Op. Att'y Gen. No. 162.

§ 84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

(1) Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in violation of the Open Meetings Act shall be declared void by the district court if the suit is commenced within one hundred twenty days of the meeting of the public body at which the alleged violation occurred. Any motion, resolution, rule, regulation, ordinance, or formal action of a public body made or taken in substantial violation of the Open Meetings Act shall be voidable by the district court if the suit is commenced more than one hundred twenty days after but within one year of the meeting of the public body in which the alleged violation occurred. A suit to void any final action shall be commenced within one year of the action.

(2) The Attorney General and the county attorney of the county in which the public body ordinarily meets shall enforce the Open Meetings Act.

(3) Any citizen of this state may commence a suit in the district court of the county in which the public body ordinarily meets or in which the plaintiff resides for the purpose of requiring compliance with or preventing violations of the Open Meetings Act, for the purpose of declaring an action of a public body void, or for the purpose of determining the applicability of the act to discussions or decisions of the public body. It shall not be a defense that the citizen attended the meeting and failed to object at such time. The court may order payment of reasonable attorney's fees and court costs to a successful plaintiff in a suit brought under this section.

(4) Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.

Source: Laws 1975, LB 325, § 9; Laws 1977, LB 39, § 318; Laws 1983, LB 43, § 5; Laws 1992, LB 1019, § 126; Laws 1994, LB 621, § 2; Laws 1996, LB 900, § 1074; Laws 2004, LB 821, § 40; Laws 2006, LB 898, § 4.

Effect of amendments.

Laws 2006, LB 898, effective July 14, 2006, in (3), inserted the second sentence.

Laws 2004, LB 821, effective July 16, 2004, substituted "the Open Meetings Act" for "sections 79-317, 84-1408 to 84-1414 and 85-104" and "the Open Meetings Act" for "such sections" throughout the section.

JUDICIAL DECISIONS**ANALYSIS**

Attorney fees.
Evidence.
Limitations.
Penalties.
Standing.

Violations.
Vote.

Attorney fees.

Where landowners subject to real property tax assessments successfully challenged certain actions of the county board of commission-

ers and county board of equalization under Nebraska's Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414, the district court erred in awarding the landowners attorney fees and expenses in the amount of \$27,457.46. Only two of the challenged meetings were void; therefore, the Nebraska Court of Appeals reduced the district court's award by \$10,000 and awarded the sum of \$17,457.46. *Wolf v. Grubbs*, 2009 Neb. App. LEXIS 11, 17 Neb. Ct. App. 292, 759 N.W.2d 499 (2009).

Plaintiff property owners were successful plaintiffs in that they commenced suit to require compliance with the public meetings law, and even though they were not successful in having the board's action of approving a work order report without proper public notice voided, they were successful in that during the course of the lawsuit there was compliance with the notice requirement. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998), *aff'd*, 256 Neb. 1, 588 N.W.2d 589 (1999).

Evidence.

Citizen's contention that a quorum of the school board met with an attorney for the school district and discussed and made policy in violation of this law and that the motion by a board of education member to suspend the superintendent with pay passed without public discussion based on the prior nonpublic briefing and meeting was meritless as the citizen had no evidence to support his allegations. *Aldridge v. School Dist.*, 225 Neb. 580, 407 N.W.2d 495 (1987).

Limitations.

The right to collaterally attack orders made in contravention of this act for a period of one year is specifically provided by this section. *Witt v. School Dist. No. 70*, 202 Neb. 63, 273 N.W.2d 669 (1979).

An issue concerning an alleged violation of this act must be promptly and properly raised in the lower court or tribunal. *Alexander v. School Dist. No. 17*, 197 Neb. 251, 248 N.W.2d 335 (1976).

Penalties.

The district court was correct in finding the board's action — approving, without proper public notice, a \$47 million, three-year construction project traversing private land — to be voidable and not void; there was no evidence that any decision to undertake the project or to continue moving forward with it was made in secret without either public discussion or accountability from the board. *Hansmeyer v. Nebraska Pub. Power Dist.*, 6 Neb. App. 889, 578 N.W.2d 476 (1998), *aff'd*, 256 Neb. 1, 588 N.W.2d 589 (1999).

Standing.

When a metropolitan city passed an ordinance to annex adjacent land, a smaller city had standing to challenge the metropolitan

city's ordinance because any citizen of the state could commence an action to declare a public body's action void. *City of Elkhorn v. City of Omaha*, 2007 Neb. LEXIS 7, 272 Neb. 867, 725 N.W.2d 792 (2007).

Violations.

Where the county board of commissioners (BOC) and county board of equalization (BOE) published minutes from the July 5 meeting stating that the next meeting of the BOE would be held on July 12, the minutes of the prior meeting did not meet the technical requirements of Neb. Rev. Stat. § 84-1411 for meeting notice; the minutes did not give the place and time of the future meeting, nor was there any mention of the agenda for the future meeting. Because the meeting occurred within the 120 days prior to filing of the suit challenging the BOC's and BOE's alleged violations of Nebraska's Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414, the entire meeting of July 12 was void and board members were prohibited from considering any information obtained at the illegal meeting of July 12 in accordance with Neb. Rev. Stat. § 84-1414. *Wolf v. Grubbs*, 2009 Neb. App. LEXIS 11, 17 Neb. Ct. App. 292, 759 N.W.2d 499 (2009).

Where the county board of commissioners (BOC) published minutes for its June 7 meeting on June 23, minutes for the June 21 and 29 meetings were published on July 21; the BOC's failure to publish minutes within 10 working days was a violation of Neb. Rev. Stat. § 84-1413. However, a violation of Neb. Rev. Stat. § 23-122 is not a violation of the Nebraska Open Meetings Act; thus, the actions at those meetings were not void or voidable under Neb. Rev. Stat. § 84-1414. *Wolf v. Grubbs*, 2009 Neb. App. LEXIS 11, 17 Neb. Ct. App. 292, 759 N.W.2d 499 (2009).

County board of commissioners (BOC) did not substantially violate the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414, by taking up and acting upon nonagenda items under the guise of emergencies under Neb. Rev. Stat. § 84-1411: a personnel letter, a homeland security resolution, a grant for pagers, and a road resolution. The following were not appropriate emergency items addressed by the BOC: transfer of funds, a letter concerning wind energy, a waiver of notification, and a constitution with cooperative extension service; the actions taken on these matters were void under Neb. Rev. Stat. § 84-1414. *Wolf v. Grubbs*, 2009 Neb. App. LEXIS 11, 17 Neb. Ct. App. 292, 759 N.W.2d 499 (2009).

Because Neb. Rev. Stat. § 84-1411 requires notice of "each" meeting, notice of recessed and reconvened meetings must be given in the same fashion as the original meeting. Where the county board of equalization held a meeting that was a reconvening and continuation of another meeting, no separate notice was published; the entire meeting was void and board

members were prohibited from considering any information obtained at the illegal meeting in accordance with Neb. Rev. Stat. § 84-1414. *Wolf v. Grubbs*, 2009 Neb. App. LEXIS 11, 17 Neb. Ct. App. 292, 759 N.W.2d 499 (2009).

Action taken in violation of Nebraska public meeting law is subject to nullification by a district court under this section. *Johnson v. Nebraska Env'tl. Control Council*, 2 Neb. App. 263, 509 N.W.2d 21 (1993).

Vote.

The statutory language of this section indicates that it is the failure to make or take the vote in accordance with Neb. Rev. Stat. § 84-1413 rather than the failure to record a properly taken vote which will result in a declaration of invalidity. *State ex rel. Schuler v. Dunbar*, 214 Neb. 85, 333 N.W.2d 652 (1983).

OPINIONS OF THE ATTORNEY GENERAL

Illustrative case.

Where various telephone conference meetings of the Nebraska equal opportunity commission (NEOC) did not comply with the re-

quirements for an emergency meeting under § 84-1411, its actions on those occasions are void under subsection (1) of this section. 1995 Op. Att'y Gen. No. 63.

period" for "his or her period," "(ii)" for "(b)," "employee's accrued" for "member's accrued," "(iii)" for "(c)," and "employee's employer" for "member's employer"; and in the last sentence, substituted "employee" for "member" and simi-

lar language wherever it appears; in (1)(c), substituted "employee contributions" for "member contributions" and "this subsection" for "this section"; added (2) and (3); and made a related change.

ARTICLE 14

PUBLIC MEETINGS

Section

84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.

84-1413. Meetings; minutes; roll call vote; secret ballot; when.

§ 84-1408. Declaration of intent; meetings open to public.

NOTES TO UNPUBLISHED DECISIONS

Public body.

Unpublished decision: Court improperly granted the district's motion for summary judgment because a material issue of fact existed as to whether the committee was a public body subject to the Open Meetings Act; no evidence was produced to show how the committee was

created or what authority it had, and it was unknown whether the committee was an informational avenue for board members or whether the committee took a more heavy handed approach in the decision-making process. *Koch v. Lower Loup Natural Res. Dist.*, 2016 Neb. App. LEXIS 221 (Neb. Ct. App. Dec. 13, 2016).

§ 84-1409. Terms, defined.

NOTES TO UNPUBLISHED DECISIONS

Public body.

Unpublished decision: Court improperly granted the district's motion for summary judgment because a material issue of fact existed as to whether the committee was a public body subject to the Open Meetings Act; no evidence was produced to show how the committee was

created or what authority it had, and it was unknown whether the committee was an informational avenue for board members or whether the committee took a more heavy handed approach in the decision-making process. *Koch v. Lower Loup Natural Res. Dist.*, 2016 Neb. App. LEXIS 221 (Neb. Ct. App. Dec. 13, 2016).

§ 84-1410. Closed session; when; purpose; reasons listed; procedure; right to challenge; prohibited acts; chance meetings, conventions, or workshops.

NOTES TO UNPUBLISHED DECISIONS

Public body.

Unpublished decision: Court improperly granted the district's motion for summary judgment because a material issue of fact existed as to whether the committee was a public body subject to the Open Meetings Act; no evidence was produced to show how the committee was

created or what authority it had, and it was unknown whether the committee was an informational avenue for board members or whether the committee took a more heavy handed approach in the decision-making process. *Koch v. Lower Loup Natural Res. Dist.*, 2016 Neb. App. LEXIS 221 (Neb. Ct. App. Dec. 13, 2016).

§ 84-1411. Meetings of public body; notice; contents; when available; right to modify; duties concerning notice; videoconferencing or telephone conferencing authorized; emergency meeting without notice; appearance before public body.

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

(2) A meeting of a state agency, state board, state commission, state council, or state committee, of an advisory committee of any such state entity, of an organization created under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a public power district having a chartered territory of more than one county in this state, of the governing body of a public power and irrigation district having a chartered territory of more than one county in this state, of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, or of a community college board of governors may be held by means of videoconferencing or, in the case of the Judicial Resources Commission in those cases specified in section 24-1204, by telephone conference, if:

- (a) Reasonable advance publicized notice is given;
- (b) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio or visual recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if videoconferencing or telephone conferencing was not used;
- (c) At least one copy of all documents being considered is available to the public at each site of the videoconference or telephone conference;
- (d) At least one member of the state entity, advisory committee, board, council, or governing body is present at each site of the videoconference or telephone conference; and
- (e) No more than one-half of the state entity's, advisory committee's, board's, council's, or governing body's meetings in a calendar year are held by videoconference or telephone conference.

Videoconferencing, telephone conferencing, or conferencing by other elec-

tronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(3) A meeting of a board of an educational service unit, of the Educational Service Unit Coordinating Council, of the governing body of an entity formed under the Interlocal Cooperation Act, the Joint Public Agency Act, or the Municipal Cooperative Financing Act, of the governing body of a risk management pool or its advisory committees organized in accordance with the Intergovernmental Risk Management Act, of a community college board of governors, of the governing body of a public power district, of the governing body of a public power and irrigation district, or of the Nebraska Brand Committee may be held by telephone conference call if:

(a) The territory represented by the educational service unit, member educational service units, community college board of governors, public power district, public power and irrigation district, Nebraska Brand Committee, or member public agencies of the entity or pool covers more than one county;

(b) Reasonable advance publicized notice is given which identifies each telephone conference location at which an educational service unit board member, a council member, a member of a community college board of governors, a member of the governing body of a public power district, a member of the governing body of a public power and irrigation district, a member of the Nebraska Brand Committee, or a member of the entity's or pool's governing body will be present;

(c) All telephone conference meeting sites identified in the notice are located within public buildings used by members of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, Nebraska Brand Committee, or entity or pool or at a place which will accommodate the anticipated audience;

(d) Reasonable arrangements are made to accommodate the public's right to attend, hear, and speak at the meeting, including seating, recordation by audio recording devices, and a reasonable opportunity for input such as public comment or questions to at least the same extent as would be provided if a telephone conference call was not used;

(e) At least one copy of all documents being considered is available to the public at each site of the telephone conference call;

(f) At least one member of the educational service unit board, council, community college board of governors, governing body of the public power district, governing body of the public power and irrigation district, Nebraska Brand Committee, or governing body of the entity or pool is present at each site of the telephone conference call identified in the public notice;

(g) The telephone conference call lasts no more than two hours; and

(h) No more than one-half of the board's, council's, governing body's, committee's, entity's, or pool's meetings in a calendar year are held by telephone conference call, except that a governing body of a risk management pool that meets at least quarterly and the advisory committees of the governing body may each hold more than one-half of its meetings by telephone conference call if the governing body's quarterly meetings are not held by telephone conference call or videoconferencing.

Nothing in this subsection shall prevent the participation of consultants, members of the press, and other nonmembers of the governing body at sites not identified in the public notice. Telephone conference calls, emails, faxes, or other electronic communication shall not be used to circumvent any of the public government purposes established in the Open Meetings Act.

(4) The secretary or other designee of each public body shall maintain a list of the news media requesting notification of meetings and shall make reasonable efforts to provide advance notification to them of the time and place of each meeting and the subjects to be discussed at that meeting.

(5) When it is necessary to hold an emergency meeting without reasonable advance public notice, the nature of the emergency shall be stated in the minutes and any formal action taken in such meeting shall pertain only to the emergency. Such emergency meetings may be held by means of electronic or telecommunication equipment. The provisions of subsection (4) of this section shall be complied with in conducting emergency meetings. Complete minutes of such emergency meetings specifying the nature of the emergency and any formal action taken at the meeting shall be made available to the public by no later than the end of the next regular business day.

(6) A public body may allow a member of the public or any other witness other than a member of the public body to appear before the public body by means of video or telecommunications equipment.

HISTORY:

Laws 1975, LB 325, § 4; Laws 1983, LB 43, § 3; Laws 1987, LB 663, § 25; Laws 1993, LB 635, § 2; Laws 1996, LB 469, § 6; Laws 1996, LB 1161, § 1; Laws 1999, LB 47, § 2; Laws 1999, LB 87, § 100; Laws 1999, LB 461, § 1; Laws 2000, LB 968, § 85; Laws 2004, LB 821, § 38; Laws 2004, LB 1179, § 2; Laws 2006, LB 898, § 2; Laws 2007, LB 199, § 9; Laws 2009, LB 361, § 2; Laws 2012, LB 735, § 1; Laws 2013, LB 510, § 1; Laws 2017, LB 318, § 1.

Municipal Cooperative Financing Act, see § 18-2401.

Effect of amendments.

The 2017 amendment added "or of the Nebraska Brand Committee" in (3); added "Nebraska Brand Committee" in (3)(a), (3)(c) and (3)(f); added "a member of the Nebraska Brand Committee" in (3)(b); and added "committee's" in (3)(h).

The 2013 amendment added "of the Educational Service Unit Coordinating Council" in the introductory language of (2) and (3); added "council" or variants wherever it appears in (2)(d), (2)(e), and (3)(c), (3)(f), and (3)(h); added "member educational service units" in (3)(a); added "a council member" in (3)(b); and substituted "two hours" for "one hour" in (3)(g).

Cross references.

Intergovernmental Risk Management Act, see § 44-4301.

Interlocal Cooperation Act, see § 13-801.

Joint Public Agency Act, see § 13-2501.

JUDICIAL DECISIONS

Violation.

—Found.

District court erred in dismissing appellants' amended complaint to invalidate a contract between a city and an ambulance company for failure to state a claim because their admission that "bare legal notice" of a meeting was provided did not preclude them from recovery, where allegations did not need to be set forth as

a separate claim in the complaint to sustain a cause of action, both the citizens review committee and the city council were public bodies that were required to provide notice, and the appellants sufficiently alleged that the ambulance company was associated with two public employees and the contract was not awarded through an open and public process. *Tryon v. City of N. Platte*, 295 Neb. 706, 890 N.W.2d 784, 2017 Neb. LEXIS 14 (Neb. 2017).

§ 84-1412. Meetings of public body; rights of public; public body; powers and duties.

NOTES TO UNPUBLISHED DECISIONS

Public body.

Unpublished decision: Court improperly granted the district's motion for summary judgment because a material issue of fact existed as to whether the committee was a public body subject to the Open Meetings Act; no evidence was produced to show how the committee was

created or what authority it had, and it was unknown whether the committee was an informational avenue for board members or whether the committee took a more heavy handed approach in the decision-making process. *Koch v. Lower Loup Natural Res. Dist.*, 2016 Neb. App. LEXIS 221 (Neb. Ct. App. Dec. 13, 2016).

§ 84-1413. Meetings; minutes; roll call vote; secret ballot; when.

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(2) Any action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting. The requirements of a roll call or viva voce vote shall be satisfied by a public body which utilizes an electronic voting device which allows the yeas and nays of each member of such public body to be readily seen by the public.

(3) The vote to elect leadership within a public body may be taken by secret ballot, but the total number of votes for each candidate shall be recorded in the minutes.

(4) The minutes of all meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.

(5) Minutes shall be written, except as provided in subsection (6) of this section, and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

(6) Minutes of the meetings of the board of a school district or educational service unit may be kept as an electronic record.

HISTORY:

Laws 1975, LB 325, § 6; Laws 1978, LB 609, § 3; Laws 1979, LB 86, § 9; Laws 1987, LB 663, § 26; Laws 2005, LB 501, § 1; Laws 2009, LB 361, § 3; Laws 2015, LB 365, § 2; Laws 2016, LB 876, § 1.

Effective Dates

July 21, 2016

Effect of amendments.

The 2016 amendment, in the second sentence

of (2), substituted "public body" for "municipality, a county, a learning community, a joint entity created pursuant to the Interlocal Cooperation Act, a joint public agency created pursuant to the Joint Public Agency Act, or an agency formed under the Municipal Cooperative Financing Act" and "such public" for "such city council, village board, county board, or governing."

The 2015 amendment added "except as provided in subsection (6) of this section" in (5) and added (6).

§ 84-1414. Unlawful action by public body; declared void or voidable by district court; when; duty to enforce open meeting laws; citizen's suit; procedure; violations; penalties.

NOTES TO UNPUBLISHED DECISIONS

Public body.

Unpublished decision: Court improperly granted the district's motion for summary judgment because a material issue of fact existed as to whether the committee was a public body subject to the Open Meetings Act; no evidence was produced to show how the committee was

created or what authority it had, and it was unknown whether the committee was an informational avenue for board members or whether the committee took a more heavy handed approach in the decision-making process. *Koch v. Lower Loup Natural Res. Dist.*, 2016 Neb. App. LEXIS 221 (Neb. Ct. App. Dec. 13, 2016).

ARTICLE 15

PUBLIC EMPLOYEES RETIREMENT BOARD

Section

- 84-1501. Public Employees Retirement Board; created; members; qualifications; appointment; terms; vacancy; expenses; removal.
- 84-1503. Board; duties; director; duties.
- 84-1505. Deferred compensation; treatment; investment.
- 84-1511. Board; establish preretirement planning program; for whom; required information; funding; attendance; fee.
- 84-1511.01. Board; retirement education and financial planning program; for whom; required information; funding; attendance; fee.
- 84-1514. Class V Retirement System Payment Processing Fund; created; use; investment; transfers of funds; liability.

§ 84-1501. Public Employees Retirement Board; created; members; qualifications; appointment; terms; vacancy; expenses; removal.

(1) The Public Employees Retirement Board is hereby established.

(2)(a) The board shall consist of eight appointed members as described in this subsection and the state investment officer as a nonvoting, ex officio member. Six of the appointed members shall be active or retired participants in the retirement systems administered by the board, and two of the appointed members (i) shall not be employees of the State of Nebraska or any of its political subdivisions and (ii) shall have at least ten years of experience in the management of a public or private organization or have at least five years of experience in the field of actuarial analysis or the administration of an employee benefit plan.

(b) The six appointed members who are participants in the systems shall be as follows:

(i) Two of the appointed members shall be participants in the School Employees Retirement System of the State of Nebraska and shall include one administrator and one teacher;

(ii) One of the appointed members shall be a participant in the Nebraska Judges Retirement System as provided in the Judges Retirement Act;

(iii) One of the appointed members shall be a participant in the Nebraska State Patrol Retirement System;