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June 1, 2006

Jay Holmquist, General Manager
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Re: Open Meetings Law

Dear Jay:

You have asked that I review the changes to the Open Meetings Law brought about by the passage of LB 898 and to give a general overview of the Open Meetings Law. This memorandum is not all inclusive and only sets out what I consider to be the more commonly used provisions.

I. OPEN MEETINGS ACT

The requirements of the Open Meetings Act are set out in *Neb. Rev. Stat.* §§ 84-1408 to 84-1414 (Reissue 1999).

A. Intent. In *Neb. Rev. Stat.* § 84-1408, the Legislature declared that the formation of public policy is public business and may not be conducted in secret and that every meeting of a public body is required to be open to the public except as otherwise provided by the Nebraska Constitution, federal statutes, and sections 79-317 (pertaining to the State Board of Education), 84-1408 to 84-1414, and 85-104 (pertaining to the Board of Regents of the University of Nebraska).

B. Meeting defined. In *Neb. Rev. Stat.* § 84-1409(2), "meeting" is defined as "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."

C. Public Body defined. In *Neb. Rev. Stat. § 84-1409(1)* “public body” is defined as “governing bodies of all political subdivisions of the State of Nebraska” which includes Public Power Districts, but does not include Electric Cooperative Corporations or Electric Membership Associations.

D. Workshops and Closed Session. *Neb. Rev. Stat. § 84-1410* states that the act does not apply to chance meetings or to attendance at or travel to conventions or workshops where there is no meeting intentionally convened if there is no vote or other action taken over any matter over which the public body has supervision, jurisdiction, control, or advisory power. **This section also sets out the criteria that must be complied with before a public body is authorized to hold a closed session, which has been amended by LB 898:**

(1) First, an affirmative vote of a majority of its voting members must be obtained. A majority as used here means a majority of all of the members of the board and not a majority of the members present at the meeting.

(2) Second, in order to hold a closed session, the board must determine that it 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.” **LB 898 amended 84-1410(1) by requiring that “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) “Nothing in this section shall permit a closed meeting for discussion of the appointment or election of a new member to any public body.”

It should be noted that the above list is not all-inclusive. There may be other legitimate reasons for holding a closed session. One is to receive legal advice from an attorney.

(3) Third, the vote to hold a closed session must be taken in open session. The vote of each member on the question of holding a closed session, the reason for the closed session and the time when the closed session commenced and concluded must be recorded in the minutes.

LB 898 amended 84-1410(2) by adding that the entire motion must be recorded in the minutes. LB 898 also added that if the motion to close passes, then the presiding officer immediately prior to the closed session is required to restate on the record the limitation of the subject matter of the closed session.

(4) Fourth, while in closed session, the board may only consider matters for which the board voted to hold a closed session. These are the matters that are recorded in the minutes as the reason for holding a closed session. **LB 898 amended 84-1410(2) and changed this requirement by restricting matters to be considered to those set forth in the motion to close.**

(5) Fifth, the meeting shall be reconvened in open session before any formal action may be taken. Formal action means “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 . . .” *Neb. Rev. Stat. § 84-1410(2)*.

E. Advance Public Notice. **LB 898 amended** section 84-1411(1) which requires giving reasonable advance public notice of the agenda by now requiring that **agenda items be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting.** If a board wishes to discuss an item on the agenda from a previous board meeting, it is inappropriate to discuss this item solely under the agenda item “old business.” If the item is categorized as old business, in addition it should be sufficiently described to give the public reasonable notice of the matter that will be considered.

F. Emergency Meeting. When it is necessary to hold an emergency meeting without reasonable advance public notice, under Section 84-1411, the nature of the emergency shall be stated in the minutes. Emergency meetings may be held by means of electronic or telecommunication equipment. News media are required to be notified. Minutes of the emergency meeting including the nature of the emergency are required to be available by the end of the next day.

G. Documents Available at Public Meetings. Section 84-1412 requires at least one copy of all documents being considered by the public body be made available to the public. **LB 898 amended this section to provide that at least one copy of the open meetings law be posted in the room where the meeting is held and at the beginning of the meeting the public are required to be informed where it is located. NREA will be distributing laminated posters of the law that are suitable for hanging on a wall.**

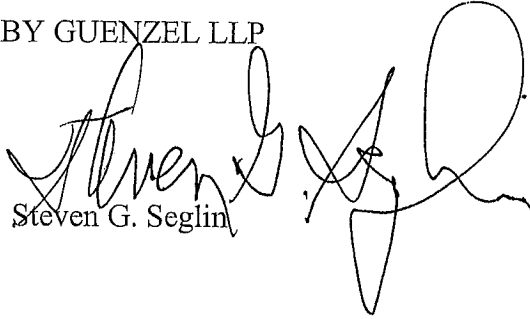
H. Public Records. Section 84-1413 provides that the minutes of a meeting and any documents received in open session are public records and open to public inspection during normal business hours. Any action taken on any question or motion is required to be taken by roll call vote. The vote to elect leadership may be taken by secret ballot.

I. Violation of the Open Meetings Act. Section 84-1414 sets out the consequences of violations of the Open Meetings Law. **LB 898 amended this section by stating it is no longer a defense to a claimed violation that the citizen making the charge attended the meeting and failed to object at such time.**

Very truly yours,

CROSBY GUENZEL LLP

By



Steven G. Seglin

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