

LAW OFFICES

CROSBY GUENZEL LLP

FEDERAL TRUST BUILDING
134 SOUTH 13TH STREET, SUITE 400
LINCOLN, NEBRASKA 68508
TELEPHONE: (402) 434-7300
FACSIMILE: (402) 434-7303

WRITER'S E-MAIL: SGS@CROSBYLAWFIRM.COM
WRITER'S DIRECT DIAL NO. (402) 434-7324

WILLIAM D. KUESTER
STEVEN G. SIGLIN
ROCKY C. WEBER
DAVID A. JARECKE
WILLIAM R. KUTILEK
RICHARD L. RICE
THOMAS E. JEFFERS
MATHEW T. WATSON

THEODORE L. KESSNER (RETIRED)

ROBERT B. CROSBY (1911-2000)
ROBERT C. GUENZEL (1921-2007)

December 1, 2008

Jay Holmquist, General Manager
Nebraska Rural Electric Association
800 South 13th Street
P.O. Box 82048
Lincoln, NE 68501

Re: Telephonic Board Meetings

Dear Jay:

QUESTION

You have asked whether it is permissible under the Open Meetings Act for public power districts to conduct telephonic board meetings.

ANSWER

It is permissible, but only in an emergency as discussed below. Regular and special meetings may only be conducted in person and no member of the board may participate as a board member by telephone at a regular or special board meeting.

ANALYSIS

Neb. Rev. Stat. § 84-1408 states “[i]t is hereby declared to be the public 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.”

Neb. Rev. Stat. § 84-1409 defines “meeting” as “all regular, special, or called meetings, formal or informal, of any public body for the purpose of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.”

Neb. Rev. Stat. § 84-1411(1) provides that “[e]ach 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 to the public. Such notice shall be transmitted to all members of the public body and to the public.

It is quite evident that the public policy of the Open Meetings Acts is for public boards to have public meetings where the public can be present and participate. Telephonic meetings limit or in some instances may even preclude the public from being present and participating.

Nevertheless, the Open Meetings Act has three limited exceptions where videoconferencing and telephonic meetings may occur. One exception, not applicable to public power districts (except for Nebraska Public Power District) is specified in *Neb. Rev. Stat.* § 84-1411(2). This exception applies to a meeting of a state agency, state board, state commission, state council, or state committee and other similar types of board, including a public power district having a chartered territory of more than 50 counties in the state, which may hold a videoconference. The Judicial Resources Commission in certain instances may hold a telephone conference. This exception appears to be authorized because these entities are composed of many members living all over the state and it may be difficult to obtain a quorum in person for every meeting. However, public notice, reasonable arrangements to accommodate the public’s right to attend, hear, and speak at the meeting must be made, and a copy of all documents being considered is available at the videoconferencing or telephone conference site. In addition, telephone conferencing cannot occur more than 50% of the time during any calendar year. There are other conditions specified in the statute in order that videoconferencing or telephone conferencing can legally occur.

The other exception appears in *Neb. Rev. Stat.* § 84-1411 (3) which applies to a meeting of the governing body of an entity formed under the Interlocal Cooperation Act or the Joint Public Agency Act or the governing body of a risk management pool or its advisory committees, which may be by conference call. There are a number of conditions specified in the statute before the conference call is authorized.

The only exception which applies to public power districts (other than Nebraska Public Power District) is specified in *Neb. Rev. Stat.* § 84-1411 (5) which provides that “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 telephonic equipment.

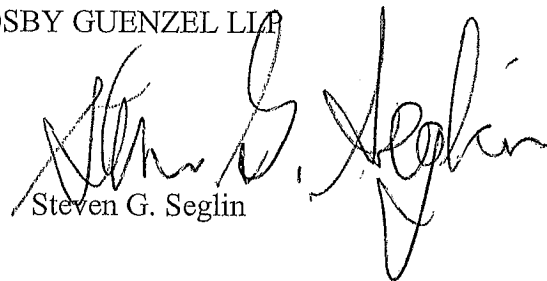
CONCLUSION

Public power districts (except for Nebraska Public Power District) are required to hold their regular and/or special meetings in person. No member of the Board may participate as a board member by telephone at a regular or special board meeting. The only exception is for an emergency, which may then be held by means of electronic or telecommunications equipment.

Very truly yours,

CROSBY GUENZEL LLP

By


Steven G. Seglin

SGS:rrk