

2008

*Thirty-eighth
Annual Report
of the
Nebraska Public
Counsel*

*The
Ombudsman*

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**THE
OMBUDSMAN**

2008



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NEBRASKA PUBLIC COUNSEL'S OFFICE

MISSION STATEMENT

TO PROMOTE ACCOUNTABILITY IN PUBLIC ADMINISTRATION AND PROVIDE CITIZENS WITH AN INFORMAL MEANS FOR THE INVESTIGATION AND RESOLUTION OF THEIR COMPLAINTS AGAINST THE ADMINISTRATIVE AGENCIES OF NEBRASKA STATE GOVERNMENT.

EXPOSITION

- The Public Counsel's Office is a public accountability and problem-solving agency. Its fundamental purposes are to promote accountability by state agencies and to investigate, address and resolve, through informal means, citizens' complaints relating to the administrative acts of state agencies.
- The "administrative acts" that may be addressed by the Public Counsel's Office include any action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an agency of state government.
- In addressing citizen complaints, the emphasis is always on the need for informality in resolving the disputes between citizens and agencies. Because of this emphasis on informality, some of the work of the Public Counsel's Office takes on the appearance of being in the nature of mediation or conciliation. However, the Public Counsel's Office is interested in more than simply resolving disputes and must, particularly in its public accountability role, carry out serious fact-finding. In order to perform this fact-finding, the Public Counsel's Office has been given very real investigative powers, including the subpoena power.
- The approach to each citizen's complaint is tailored to its particular facts, but the Public Counsel's Office always addresses complaints impartially, and does not approach cases from an initial perspective of acting as an advocate for the complainant. In fact, many complaints are found to be

unjustified by the Public Counsel's Office precisely because the results of a neutral investigation show that the complaint is not sustained by the facts. On the other hand, once it has been determined from an investigation that a complaint is justified, it is the duty of the Public Counsel's Office to approach the relevant administrative agency with recommendations for corrective action. In pursuing these recommendations, the Public Counsel's Office takes on the role of an advocate, not for the complainant, but for the corrective action and, in a very real sense, for the general improvement of public administration.

- Because of its interest in improving public administration, the Public Counsel's Office is not necessarily satisfied with the outcome of a case merely because the complainant may be satisfied. The Public Counsel's Office also has to consider the broader implications of a case for the administrative system and, where appropriate, make recommendations for changes that will strengthen agency policies and procedures. By performing this function, and by publishing occasional reports of its findings and recommendations, the Public Counsel's Office also helps to promote public accountability of the agencies of state government and performs a legislative oversight function.

TRANSMITTAL

Section 81-8,251, R.R.S. 1943, provides that the Public Counsel shall each year report to the Clerk of the Legislature and to the Governor concerning the exercise of the functions of the office during the preceding calendar year. Pursuant to Section 81-8,251, this Thirty-eighth Annual Report of the Nebraska Public Counsel's Office has been prepared as the annual report for the calendar year 2008, and is hereby respectfully submitted.

THE OMBUDSMAN CONCEPT

Throughout much of the last century, countries around the world, in general, and Americans, in particular, have witnessed a dramatic growth in the scope of government. The modern bureaucratic state, with its extended supervisory functions and its increased provision of services, has become an unavoidable reality. As a natural concomitant of that reality, the organization and operation of government has become more sophisticated, and more complex, as government has endeavored to perform its expanded role in an efficient, evenhanded, and procedurally reasonable manner. A common result of this increased complexity in government is the utter bewilderment that many citizens experience when confronted by the intricate, and seemingly infinite, array of rules, regulations, policies, and procedures that they encounter in their dealings with the bureaucracy of modern government. Thus, as government's involvement in the lives of its citizens has become more frequent, direct, and thorough, citizen interaction with that government has simultaneously become more complicated and, for many, far more frustrating.

As might be expected, these combined characteristics of modern government tend to generate a wide assortment of grievances in cases where citizens feel, rightly or wrongly, that their government has treated them in a manner that is unreasonable, unfair, or improper. While some of those grievances are ultimately resolved through the sole efforts of the complaining party, many grievances are left unresolved, either because there is no avenue for a ready solution, or because the grievant simply lacks the resources and sophistication necessary to utilize those avenues that do exist. When such grievances are left unresolved, citizens become more alienated from their government, and the errors of governmental operatives are left unaddressed and are, perhaps, even reinforced.

In order to help a bewildered public deal with the backlog of unresolved citizen grievances against governmental bureaucracy, numerous governments around the world have turned to the Swedish innovation of the ombudsman. Although the specific characteristics of the institution may differ in certain respects from one government to another, the basic concept of an ombudsman's office envisions an independent office that is designed to receive, investigate, and pursue informal resolution of miscellaneous citizen complaints relating to agencies of government. In carrying out this function, the ombudsman is not only expected to resolve the specific substantive complaints that come to the office, but the ombudsman is also

expected to promote improvements in the quality of government by advocating for changes in the ongoing management and operation of the agencies under the ombudsman's jurisdiction. It is also anticipated that the ombudsman, in performing these functions, will help to hold powerful governmental agencies publicly accountable for their actions.

In its classic form, an ombudsman, although an independent officer, is viewed as being an adjunct of the legislative branch of government. Indeed, one of the reasons that the ombudsman's office in its classic form is made a part of the legislative branch is to help insulate the ombudsman from pressures that the office might experience if it were placed within the executive branch of government. Because of its association with the legislative branch of government, the classic ombudsman is also able to perform a role as part of the apparatus for legislative oversight of governmental agencies and programs. In fact, the work of the ombudsman in resolving the problems that are experienced by ordinary citizens at the hands of governmental agencies gives the ombudsman a unique insight into the real world activities and consequences of those agencies and programs. That insight may then be used as a resource by the legislature in carrying out its oversight responsibilities with respect to the agencies within the ombudsman's jurisdiction.

Typically, the investigatory powers given to an ombudsman's office under the law are very real, and very meaningful. In arguing for the resolution of citizens' complaints, and in advocating for fundamental changes in the policies and procedures of administrative agencies, the "truth," as revealed to the ombudsman by a thorough investigation, is the most potent weapon that an ombudsman can wield. Indeed, without the power to thoroughly investigate the facts surrounding citizens' complaints, an ombudsman's office would be crippled in its efforts to understand and resolve those grievances. In addition to its investigatory authority, an ombudsman's office also has very broad power to make recommendations to the agencies under its jurisdiction, and to publish its findings and conclusions relative to the grievances that it investigates. However, the typical ombudsman's office does not have the authority to compel an administrative agency to accept and implement its conclusions and recommendations. Thus, in its formal relationship with the agencies under its jurisdiction, an ombudsman's office performs solely an advisory role. Nevertheless, it is widely recognized that an ombudsman's office, by providing a direct and informal avenue for the mediation of citizen grievances, is a valuable tool for enhancing the relationship between a government and its citizens and, ultimately, for improving the administration of government itself.

The ombudsman institution made its first appearance in North American government in the 1960's. In his ground breaking books *When Americans Complain* and *Ombudsmen and Others*, Professor Walter Gellhorn of Columbia University promoted the ombudsman concept as a means of providing an "external critic of administration" for American government. In 1967, Professor Gellhorn prepared a "Model Ombudsman Statute" and in 1969 the American Bar Association adopted a resolution which articulated the twelve essential characteristics of an ombudsman for government. The ABA followed this effort with the development of its own Model Ombudsman Act, which it adopted in 1971. From these beginnings, the ombudsman institution gradually spread to state and local governments across the United States.

INFORMATION AND REFERRAL

In addition to performing its specific statutory mandate regarding the resolution of citizen complaints, the Office of the Public Counsel has assumed the additional function of responding to citizen requests for general information relative to government. In this day of complex bureaucratic structures and imponderable regulatory provisions, it is not unusual for citizens to be confused or simply "lost" in their dealings with government. The Office of the Public Counsel is frequently contacted by citizens with questions regarding the provision of governmental services, the content of specific laws and regulations and a variety of miscellaneous issues relating to government in general.

Historically, the Office of the Public Counsel has responded to such inquiries either by providing the information sought directly or by referring the citizens involved to the organizations or governmental entities that would be best equipped to provide the information sought. The Office of the Public Counsel, with its broad expertise in the organization and operation of government, particularly on the state level, has proven to be ideally suited to serve as a clearinghouse for citizen inquiries pertaining to government. Over the years, thousands of citizens have contacted the Office of the Public Counsel and have received the information necessary to enable them to better understand and interact with their government.

HISTORY OF THE OFFICE

On July 22, 1969, the Nebraska Legislature passed LB 521, providing for the establishment of the Office of the Public Counsel. LB 521 was approved by Governor Norbert T. Tiemann, on July 29, 1969. (See Appendix.) The Office commenced actual operation on June 1, 1971, with the appointment of Mr. Murrell B. McNeil to the position of Public Counsel.

In creating the Office of the Public Counsel, the Nebraska Legislature established an office that was, in all significant respects, consistent with the classic model of an ombudsman's office as articulated in the American Bar Association's Resolution setting forth the twelve essential characteristics of an ombudsman for government. The new law contemplated that the Public Counsel would be an independent officer, appointed by the Legislature for a term of six years and subject to removal, for good cause, only by a vote of 2/3 of the members of the Legislature. In order to facilitate its efforts to resolve citizen complaints, the Office of the Public Counsel was endowed with very thorough investigatory powers, including the authority to address questions to officers and employees of state agencies, free access to agency records and facilities, and the subpoena power. The Office of the Public Counsel was further empowered to publish its findings and conclusions relative to citizen complaints and to make recommendations to the agencies under its jurisdiction. The Office was also authorized to participate, on its own motion, in general studies and inquiries not relating to specific citizen complaints. The jurisdiction of the Office of the Public Counsel was limited to scrutiny of the administrative agencies of the state government. The Office was not given jurisdiction over complaints relating to the courts, to the Legislature or to the Governor and her personal staff. Most significantly, the Office of the Public Counsel was not given jurisdiction over political subdivisions of the State.

After serving for over nine years as Nebraska's Public Counsel, Murrell McNeil retired from office, effective July 31, 1980. Upon Mr. McNeil's retirement, Mr. Marshall Lux, then the Deputy Public Counsel, became the Acting Public Counsel, by operation of law. On February 19, 1981, the Executive Board of the Legislative Council nominated Mr. Lux for appointment to the position of Public Counsel, pursuant to Section 81-8,241, R.R.S. 1943. That nomination was approved by the Nebraska Legislature on February 20, 1981. The Legislature reappointed Mr. Lux to successive terms in 1987, 1993, 1999, and 2005.

Throughout its history, the Public Counsel's Office has been the subject of legislative initiatives that have refined and extended the scope of the office's role in Nebraska government. The first of these developments was seen in 1976, as policy-makers around the country were searching for new ways to reform the corrections system in the wake of the Attica riots. The Nebraska Legislature responded to that situation in part by amending the Public Counsel Act to create the new position of the Deputy Public Counsel (Ombudsman) for Corrections. In creating this new position, the Legislature was, in effect, saying that it wanted to give special emphasis to resolving prison complaints and to have someone on the Legislature's staff who could act as an expert in that area. It was anticipated that this new position would not only offer inmates an effective avenue for obtaining administrative justice and the redress of grievances, but that it would also serve the interests of the state by helping to reduce sources of anger and frustration that led to inmate violence, and by decreasing the number of inmate lawsuits relating to prison conditions and operation. The Deputy Public Counsel for Corrections is Mr. James Davis III.

A significant issue before the Nebraska Legislature in 1989 was concerned with demands by Native Americans, particularly the Pawnee Tribe, that the Nebraska State Historical Society repatriate to the tribes those human remains and artifacts that archaeologists had recovered over the decades from Native American burial sites. The Legislature met these demands by adopting the Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act, which established procedures that allowed the tribes to seek the repatriation of human remains and burial goods that were being held in the collections of the Historical Society and other museums across the state. The Ombudsman's Office was given an important role in this procedure by being designated by the Legislature as the body responsible to arbitrate any dispute that arose between the tribes and the museums in the repatriation process. The Ombudsman's Office was actually called upon to perform this arbitration role on two occasions in disputes between the Pawnee Tribe and the Historical Society.

In 1993, in an effort to find new ways to encourage efficiency and discourage misconduct in state government, the Nebraska Legislature passed the State Government Effectiveness Act. Among other things, the Act contemplated that the Ombudsman's Office would become a focal point for the investigation of allegations of significant wrongdoing in state agencies. The Act also provided for a new procedure designed to protect state employees who acted as whistleblowers

to disclose wrongdoing in state government from being retaliated against by their supervisors. The Ombudsman's Office was given the key role in investigating and responding to these retaliation complaints and has, over the years, addressed many such cases. Early in 1997, the Nebraska Supreme Court found one important provision of the Act to be unconstitutional under the theory that it was a violation of the principle of separation of powers. *State ex rel. Shepherd v. Nebraska Equal Opportunity Commission*, 251 Neb. 517, 557 N.W.2d 684 (1997). However, those constitutional objections, as well as several other perceived difficulties with the functioning of the Act, were addressed by the Nebraska Legislature in LB 15 of 1997, which was signed by the Governor on March 10, 1997.

One of the most important issues before the Nebraska Legislature in 1994 was an initiative to restructure the state's system for the delivery of welfare services. In the process of changing this system, it was recognized that the recipients of welfare services would need to have a special problem-solver to help in dealing with the redesigned welfare system. It was also recognized that the Legislature itself would benefit from having the input and expertise of a staff person who was directly involved in addressing the day-to-day problems that arose in the implementation of the new welfare system. Responding to these needs in much the same way that it had in 1976, the Legislature created the new position of Deputy Public Counsel for Welfare Services as a part of the legislation that ultimately enacted the changes to the state's welfare system. The Deputy Public Counsel for Welfare Services is Ms. Marilyn McNabb.

STAFF

The chief asset of the Public Counsel's Office is not its statutory powers or mandate. It is not even the high level of support that the Office receives from the public and the Legislature, although those factors are certainly important to the Public Counsel's success. The chief asset of the Public Counsel's Office is its staff, the men and women who carry out the routine duties of the Office.

The staff of the Office of the Public Counsel consists of eleven full-time and three part-time employees. All of the eleven full-time staff members (Ombudsman Marshall Lux, Deputy Public Counsel for Corrections James Davis III, Deputy Public Counsel Terry Ford, Deputy Public Counsel for Institutions Oscar Harriott, Deputy Public Counsel for Welfare Services Marilyn McNabb, and Assistant Public Counsels Barb Brunkow, Carl Eskridge, Anna Hopkins, Jerall Moreland, Hong Pham, and Gary Weiss) are actively involved in casework. The part-time employees (Marge Green, Carla Jones, and Kris Stevenson) serve as clerical personnel and have significant contact with the public in fielding telephone calls and providing immediate responses to questions from citizens.

It is, of course, always difficult to conveniently describe or characterize any group of people, even a group as small as the staff of the Nebraska Public Counsel's Office. The people who make up that staff are, after all, individuals, who bring diverse backgrounds and a wide range of unique talents to their jobs. Many of the professional employees of the Public Counsel's Office came to the office with previous experience in state government. Some had worked first in the office as volunteers before becoming permanent professional employees of the office. Four of the professionals in the office have law degrees, and some on the professional staff have advanced degrees in other areas as well. All of these backgrounds and associated talents contribute in many important ways to the success of the Public Counsel's Office. Viewed collectively, however, the most important characteristic of the staff of the Public Counsel's Office is its experience.

While the details of their backgrounds are remarkably diverse, one characteristic that many of the Public Counsel's Office staff have in common is their experience in working for other agencies of Nebraska state government. Nearly every member of the Public Counsel's Office professional staff had prior experience working in Nebraska state government before joining the Public Counsel's Office. In some cases, that prior experience was extensive. The professional staff of the

Public Counsel's Office has an average of nearly seventeen years of service with the State of Nebraska. This wide range of experience both in and out of the Public Counsel's Office has given the staff a meaningful exposure to the day-to-day functioning of state government and the issues that are common to its operation and have made the staff a true collection of professionals in the handling of complaints against state administrative agencies.

Beyond its experience in state government generally, the staff of the Public Counsel's Office has the additional advantage of continuity. The rate of turnover of the Public Counsel's staff is very low, even for such a relatively small office. The average Public Counsel's Office employee has been with the office for more than eleven years, an average which would be higher were it not for the recent addition of three new employees. This means that the employees of the Public Counsel's Office are not only experienced in the minutia of state government, but that they are also highly experienced in the fine art of complaint-handling. They have refined the needed human skills for dealing with people under stress. They have developed the analytical skills for untangling complicated issues presented in complaints. They have acquired the negotiation skills necessary for bringing citizens and bureaucrats together for the resolution of difficult problems.

Dealing effectively with citizen complaints requires an uncommon combination of talents and expertise. The professional training and background of the Public Counsel's staff is both diverse and extensive. That background together with the uncommon continuity of the staff has enabled the Public Counsel's Office to develop and maintain a strong foundation in what can truly be described as the profession of complaint handling.

MESSAGE FROM THE OMBUDSMAN

In 2007, two bills were introduced in the Nebraska Legislature that have had a significant impact on the duties of the Public Counsel's Office. The two bills in question, LB 467 and LB 107, had originally been heard before the Legislature's Judiciary Committee during the 2007 session, but were held by the Committee and not advanced in that year. However, in 2008, the two bills were combined into a modified form of LB 467, and were advanced to the floor of the Legislature. On April 7, 2008, LB 467 was passed by the Legislature on final reading with 44 votes in the affirmative. There were no votes against LB 467. On April 11, 2008, Governor Heineman signed LB 467 into law.

In its original form, LB 467 was a bill that would extend the jurisdiction of the Public Counsel's Office into an entirely new area. Ever since the inception of the office in 1969, the jurisdiction of the office had been, as a technical matter, strictly limited to complaints concerned with administrative agencies of state government, that is, state agencies only. Yet every year, out of the thousands of cases that the office received, there was always a significant minority of cases, maybe 10% or more annually, that involved matters entirely outside of the Public Counsel's jurisdiction. Most of these non-jurisdictional cases are difficult to categorize, some involved city government, some involved schools, and some even involved the federal government, but there was always one significant, identifiable category of non-jurisdictional cases received by the Public Counsel every year that fell into a specialized niche, and that was the category of complaints involving county jail issues.

Over the years, the issues presented in the county jail complaints that were received by the Public Counsel's Office involved everything from alleged physical abuse by guards, to complaints about the food served at the facilities. Also, many of the county jail cases involved complaints about medical services, and presented serious concerns about inmate wellbeing and the quality of the medical services being provided. It was always a frustrating situation for the Public Counsel's Office to be compelled to turn these county jail complaints away as non-jurisdictional, not only because they often involved important issues, but also because they often presented much the same sort of issues that the office was quite familiar with in its work on the hundreds of cases that that the Public Counsel receive from prisoners in the state's corrections facilities. But no matter how familiar we might have been with the issues presented, when it the complaint came

from a county jail, we could not respond as we would like, because we did not have jurisdiction over county jail cases.

LB 467, introduced by Senator Ernie Chambers, was intended to deal with this paradox by extending the Public Counsel's jurisdiction to include those complaints that come from Nebraska's county jails. The State of Nebraska currently has over seventy active county jail facilities. As a practical matter, there was no other entity in Nebraska government that had the specific job of responding to complaints from county jails. While the Nebraska Jail Standards Board does perform periodic jail inspections to see whether the jails are complying with general jail standards, that agency did not routinely respond to individual inmate complaints from Nebraska jails.

LB 107, originally introduced by Senator Dwite Pedersen, proposed that the State create a new position of Deputy Public Counsel for Institutions on the Public Counsel's staff. From its inception, more than thirty-five years ago, the Public Counsel's Office has had jurisdiction over the state's regional centers (mental health facilities), and veterans homes, and over the Beatrice Developmental Center, the State's only residential facility designed to train and treat the developmentally disabled. In recent years, there had been a series of disturbing reports made by credentialing agencies about the quality of care being provided in the Beatrice State Developmental Center, and in one of the State's veterans homes. LB 107 was seen as one way to help deal with that problem by putting the Public Counsel's Office in a stronger position to monitor those facilities and serve as an early-warning system for potential problems.

Although LB 467 and LB 107 definitely meant more in the way of work for our office, we definitely welcomed the challenges that these two proposals represented, and were well disposed to the bills from the standpoint of their policy intent. In the Public Counsel's Office, we have tried very hard over the years to penetrate the administrative systems of State institutions, to protect the rights of their often very vulnerable residents, to help to improve how those facilities are operated, and to generally help to provide for better legislative oversight of those facilities. However, while the Public Counsel's Office has certainly had some meaningful successes in this area, we have also been somewhat frustrated, because we have never felt that our office was able to have the same impact in the veterans homes, Regional Centers, and in the Beatrice State Developmental Center that we have enjoyed in the area of the State's correctional facilities. In the case of our work in the corrections area, our office has, in fact, had a great deal of success in terms of penetrating the administrative systems involved. We recognized that much could

be gained if we could experience the same results in other State facilities, such as the State's veterans homes and the Beatrice State Developmental Center.

The adoption of LB 467 and LB 107 meant that there would be an enlargement of the Public Counsel's staff and a reorganization of the office. Mr. Oscar Harriott, who had for many years been the Deputy Public Counsel for Corrections, was reassigned to the new position of Deputy Public Counsel for Institutions. Assistant Public Counsel James Davis III was promoted to the position of Deputy Public Counsel for Corrections. Three new Assistant Public Counsels were then hired, two to help with the work on complaints from the county jails, and one to replace Mr. Davis. The three new Assistants are Ms. Barb Brunkow, Mr. Jerall Moreland, and Mr. Gary Weiss.

The Public Counsel's Office is not only a complaint-handling office, it is also an office that is concerned with oversight of public agencies, and with finding ways to improve public institutions and administrative programs. This means that we need to know how those institutions and programs are working, and where they might need improvement. We get our information about administrative systems through the complaints that we receive. In the case of inmates in the state's correctional system, this approach has worked perfectly, and our office has been able to have a real impact in terms of helping to promote long-term improvements in the system. We approach the implementation of LB 467/107 with a real sense of enthusiasm and a commitment to making the same kind of difference in county jails and in the state's mental health facilities that we have in the field of corrections.

Marshall Lux
Nebraska Ombudsman

COMPLAINT SUMMARIES

The following summaries are offered as thumbnail descriptions of the kind, source, and variety of a few of the routine complaints presented to Public Counsel's Office in 2008.

Department of Health and Human Services

Case #709

The complainant's son, who is nearly 18 years old, is in the custody of the State and has been placed in the Nebraska Boys Home in South Sioux City. She said that her son is there for mental health treatment, plus attention to some other problems. The complainant said that her complaints are primarily concerned with the caseworker who is handling the case. The complainant said that she has not heard from the caseworker in over three months. She said that the caseworker does not hold team meetings. The mother said that her son is going to be aged-out of the Home soon, and that she wants to be sure that he receives the help he needs before that happens.

The complainant said that her son is supposed to receive transportation money for home visits and therapy, but he does not receive this help. She also says that HHS does not follow through on the judge's orders in the case. The mother said that her son has engaged in self-harm in the past, but she has not received notification about this from the caseworker. She said that are trying to get SSI, and that the caseworker needs to help her, but the caseworker does not get in contact with her. She says that the caseworker's supervisor changes about every month, and the current supervisor does not know anything about the case, and does not get back to her with answers.

Case #1012

The complainant's eight year old step-daughter is a ward of the State, and is in foster care. For over a month a visit had been scheduled for this date. The visit was to be from 10:00 AM to 4:00 PM. One-half hour after the visit was supposed to begin, the family called HHS to see if the visitation supervisor was on the way with the child. The complainant said at that point they learned that the time of the visit had been changed to start at 3:00 PM. The complainant said that the child's

father has to go to work at 4:00 PM, so he will not have any time to spend with his child, if the visit is rescheduled. They were not notified about this change at all. The complainant maintained that HHS was well aware of the father's schedule, and should not have changed the timing of the visit without first consulting the family.

Case #1092

The complainant said that she has been through a terrible mental trauma. She lost her home, and her job, and has had other misfortunes. Now she said that she is being confronted with the loss of welfare benefits, and does not know how she will cope. She has one daughter to care for, as well as herself.

The complainant said that after months of struggle she has finally gotten on her feet and is working 30 hours per week. However, her HHS caseworker has told her that effective July 1 her child care subsidy is being terminated. Also, as of August 1 the complainant will no longer be receiving Food Stamps and Medicaid benefits. Although the complainant's daughter has had health insurance coverage through her father's employment, Medicaid paid the family's co-pay. Now, this is one more expense that the complainant will have. The complainant said that she has not been able to pay her deposit for rent or the rent for the current month. She is asking for help in obtaining an extension of her benefits.

Case #1146

The complainant has five grandsons. One of the grandsons who is 15 years old is going to be living with the complainant and his wife permanently, as soon as the paperwork is completed. The other four boys are living with their step-father. The boys' mother died last year.

The complainant said that they are having a problem because all five of the boys keep being kicked off of Medicaid that they are entitled to because of "survivor benefits." Every time this happens, the step-father has to hire an attorney to get the issue resolved. Currently, the fifteen year old grandson only has one day left of his medication for ADHD and needs his meds. The complainant says that it has already been ten days since HHS said that they would have the problem resolved. He believes that the caseworker does not know what she is doing, and because of that the family has to repeatedly go to court to get the problem resolved. The

complainant needs to get the grandson his medication, and is also seeking relief in resolving the ongoing problem of the discontinuation of the Medicaid benefits.

Case #1192

The complainant was incarcerated at the time that his two children, a one year old boy and a two and one-half year old girl, were removed from their mother's home by the State. The children are now State wards and are living together in the same foster home. They were removed from the mother's home in September of 2007.

The complainant did have week-long visits with his daughter. At the end of one of these visits, when their mother picked up the daughter, she reported a seeing a "hand print" on the child's face. After this, the complainant's visitations ended about a month later. The court then granted him supervised visits with his two children three times a week. Visits are for three hours and supervision is done by the Better Living Council.

The complainant feels that he should be allowed to have the children placed with him. However, he has been told that the "hand print" investigation was found "inconclusive" and, therefore, the children cannot be placed with him. He states he is unaware of any pictures taken of the child's face, and the police officer involved stated she did not see a print.

Department of Motor Vehicles

Case #235

The complainant is dealing with a situation involving a suspended driver's license. There was a ticket issued in Indiana, and the complainant says he has paid the fine in Indiana twice. He states that he can prove to the Nebraska Department of Motor Vehicles that the ticket has been paid, but the Nebraska Department has told him that unless they receive confirmation from Indiana there is nothing they can do for him. The complainant said that he is having a difficult time getting through to the Indiana Department of Motor Vehicles. He has been trying to contact the Indiana DMV Office in Marion, Indiana, where he got the traffic ticket. The complainant said that he has been trying to get to the right person in Indiana, but either their telephone just rings and rings, or he gets a busy signal. The Nebraska Department of Motor Vehicles will not make the contact with Indiana for him.

Case #269

The complainant said that she let her automobile insurance lapse in November of 2007. On January 7, 2008, she had an automobile accident, and on January 8 she went to get the insurance reinstated and paid the \$50 for this. She also obtained an SR-22 Insurance form. On February 7, 2008, the complainant she went to court and was fined \$144. She made arrangements with the court to pay the fine off in installments. The complainant said that she was pulled over shortly thereafter due to having a headlight out. The officer was going to give her a "defect ticket," but when he ran her through Department of Motor Vehicles computer data base, he found that she was driving on a suspended license. At that point, he ticketed her for driving on a suspended license.

The complainant states that she does not have a problem with the police officer, but with the Department of Motor Vehicles, because their records showed her driving under suspension, although she had, in fact, already paid the fee for reinstatement. She said that when she spoke to an official at DMV who was rude to her and would not answer her questions as to why her license showed up in their records as being under suspension. The complainant then spoke to a Supervisor, who stated that the Department had sent her a certified letter on February 9, however, the Supervisor refused to give the complainant the tracking number of this letter. The letter was never received by the complainant. Michelle was also rude to Ms. Lennen, yelled at her for 22 minutes, and then hung up on her. The complainant went into the Department of Motor Vehicles again, and paid another \$50 for reinstatement. She does not believe that she should have had to pay this.

Department of Correctional Services

Case #9

The complainant is an inmate at the Nebraska Correctional Center for Women. She said that she had a seizure, and fell and hit her head while she was pregnant and being incarcerated in a county jail. That was approximately nine month earlier. The complainant said that she has suffered from headaches ever since, and her headaches are getting worse. The pain has now spread into her neck, she is afraid that something more serious is going on. The complainant feels that the facility's medical staff is not taking her situation seriously.

Case #384

The complainant is an inmate at one of the state's Correctional Centers. He is suffering from wasting syndrome because he is HIV positive. He has lost more than 10 percent of his body weight in a short period of time. The facility's medical staff is not following the specialist's orders to give him Oxandrin, an anabolic steroid, twice a day. Instead he is receiving Ensure, which does not have an anabolic steroid in it. The complainant wants the medical staff to follow the specialist's orders.

Case #993

The complainant is an inmate at the Nebraska State Penitentiary. He is being held in segregation cell for manufacturing a home-made knife. The complainant says that he has been "set up" by another inmate, and that the knife was not his. This situation could have a significant impact on his case, because he just completed the transitional program and was set to see the Parole Board for a final hearing later this year.

Case #1165

The complainant is one of several inmates at the Nebraska State Penitentiary who were fired from their institutional job assignments. He said that the inmates in question were fired because of missing tokens associated with the pop vending machines. Several inmates were fired over this situation, and they are all complaining that they were fired for something that they did not do, and that all this was done without their receiving a write-up and having a due process hearing.

Case #2083

The complainant is an inmate at the Omaha Correctional Center. He said that he was sent to segregation for having allegedly assaulted another inmate, but he has not yet been served with any Misconduct Report. The complainant said that an administrator had told him until he confessed to the assault, he would "stay in the hole." The complainant refuses to confess, and wants to know why he is being

held in segregation if they do not have any evidence against him. The inmate that he allegedly assaulted has already been released from OCC, so he would like to be put back into general population. The complainant believes that his rights are being violated.

Department of Revenue

Case #1118

The complainant stated that she had recently received a letter from the Nebraska Department of Revenue notifying her that the agency is penalizing her because she did not state on her tax return that she had gotten married in September of 2007. She said that she paid into the state what she owes in taxes, and she does not believe that she should be made to pay a penalty. She said that she has tried calling the Department of Revenue without success, because their telephone lines are always busy.

Case #1625

The complainant feels that the Nebraska Department of Revenue is not doing enough to work with him in reducing the amount that he must pay in for unpaid sales and withholding taxes from a business in which he was a partner. He said that he lost his job in 2008, and the employer was supposed to send 100% of his final check to the Revenue Department, but did not do so. Now, the Department of Revenue is trying to recover the money involved. The complainant wants to know why the Department of Revenue did not pursue the employer.

The complainant says that he has a job again, but is unable to keep up with the large amount that is being taken from his current paycheck by the Department of Revenue. Out of his last three paychecks, the complainant has only received \$325, and he says that he cannot survive on that small amount. He says that he has filled out paperwork for the Department of Revenue, but they are telling him that he can only have his monthly obligation reduced to \$600, which is still more than he can afford to pay, and still survive.

Game and Parks Commission

Case #1711

The complainant is concerned about the Champion Mill State Historical Park, which he says is in disrepair. The Park property was damaged by a flood in 2007. In August, the complainant began contacting the Nebraska Games and Parks Commission concerning the issue. A meeting was held where local residents heard from the staff of the Nebraska Games and Parks Commission about plans to fix the Park. The plans involve a significant investment of money (\$129,000), and would take a couple of years to complete. The complainant expressed dismay at the cost of the plan, especially when something else could be done more cheaply, and could be completed sooner.

Department of Road

Case #1153

The complainants, owners of farm property, have concerns with a construction project of the Department of Roads that is under way. The complainants said that the Department of Roads is making a 10 X 10 box culvert, and they are taking some of the complainants' land. The complainants believe that the project will damage wetlands, but the Department of Roads said that they were actually making more wetlands. The complainants also have concerns about the way that the ditches are being enlarged.

Department of Insurance

Case #39

The complainant has a problem with her insurance company, Blue Cross/Blue Shield, over an issue concerning coverage. She said that she has appealed her case twice, and lost the appeal both times. The complainant said that she has contacted the Department of Insurance to file a consumer's complaint regarding this matter. The Department was supposed to send information to her, but she never received it.

State Patrol

Case #1074

The complainant has a concern with the State Patrol. He said that he received a letter from the State accusing him of having a motor vehicle licensed improperly. The complainant wanted to prove that the accusation was incorrect, but he said that when he contacted the State Patrol he was told by them that it would take two to three weeks for an investigator to get back to him. The complainant said that since the charge involved was potentially a felony, he wanted it to be looked at more quickly.

Department of Labor

Case #2048

The complainant was laid off from her job on December 2, 2008. She filed for Unemployment Compensation benefits on December 10. The complainant said that she went to the Nebraska Department of Labor office in Omaha to do the first part, and then called the Department's Lincoln office to complete the process. She was told by the Lincoln Office that it would be four to six weeks before they would be able to process the application on their end, due to their heavy work load. The complainant said that Labor Department clerk told her, "we have too many people filing for unemployment, we have a backlog, and there is nothing we can do". The complainant is supposed to call the Department to report on her job-seeking activities, but the calls have to go to the Lincoln office, and there is no longer an 800 number to call in to the Lincoln office.

University of Nebraska

Case #1587

The complainant received a billing for medical services from the University of Nebraska Medical Center. However, the complainant said that he understood that this bill in question had already been paid in full. Nevertheless, the University Medical Center says that the previous payment was for some other service. When the complainant requested verification of what he had actually paid the Medical Center for, he says that the information that was sent to him has gotten more

confusing. The complainant would like to have help in getting his medical bill at Medical Center straightened out.

Secretary of State

Case #1337

The complainant paid a fee to office of the Secretary of State in order to register two business names. He says that he started the process on June 16, however, when the office of the Secretary of State actually processed the information, it concluded that the necessary affidavit was not filed within the required 30 days. Now, because the affidavit was supposedly received too late to meet the 30 day requirement, the complainant is being told that he must go through the registration process again, and submit another registration fee. The complainant says that the fee submitted with the original application to register the names is not being refunded. He does not understand why he must pay again to register the business names. He feels that the information had been received by the Secretary of State on time, but that his information sat on someone's desk until it was too late to process it.

Fire Marshal

Case #1896

The complainants are co-owners of a business that was damaged by arson in July of 2008. They said they were informed by the State Fire Marshal's Office that the investigation of the fire in their business was a top priority for investigation, due to it being a case of arson. Later, however, the Fire Marshal's Office said that the investigation of their case was not a top priority, because there were no injuries or deaths, and there was not a large enough dollar loss for the case to qualify for priority treatment. Apparently, local law enforcement have said that they cannot proceed to investigate the case without official notification from the State Fire Marshal's Office. The complainants fear the arsonist could strike again, and believe that a quicker investigation is called for.

Department of Environmental Quality

Case #2074

The complainant has concerns about a Nebraska municipality's plans to build a new sewage lagoon on 40 acres of land near to town. The complainant says that the lagoon is being built over the top of an aquifer. He also says that the sewage lagoon is going to be situated on the summit of a hill, which will cause all the sewage to have to be pumped up the hill. The other problem with the planned sewage lagoon is that it will flood the complainant's land, and will cause erosion of his land, thus forcing him to have to move in the long run. The complainant said that the Nebraska Department of Environmental Quality has already approved municipality's plans to build this lagoon, but he thinks that the project needs to be reconsidered by the agency.

Department of Administrative Services

Case #997

The complainant's company provides gravel for State highway and road projects. Due to the sudden elevation in fuel costs, the complainant's company is unable to fulfill contract orders as provided for in their contract with the State Purchasing Bureau. The complainant has tried to call the State Purchasing office to explain that the increased cost of diesel fuel is making it impossible for the company to meet its contract obligations, but his calls are not being returned. Instead, the complainant has received an email stating that the company needs to fulfill all of its orders as a contracting agency, and if the orders are not filled, then the State will cancel the contract, and take away the company's vending rights in terms of bidding on future State contracts.

State Fair Board

Case #1478

The complainant said that he was concerned about alleged violations of the Nebraska Clean Indoor Air Act (relating to smoking of tobacco products) on the State Fair grounds. He claimed that he had noticed many violations of the Act when he went to the State Fair on August 25, 2008. He noticed that some of the

buildings did not have any "NO SMOKING" signs on them. He also did not see any signs telling people that they could not smoke within ten feet of the entrances of the buildings. The complainant said that he had written a letter to the State Fair administration on August 15, 2008, asking them to make sure that the proper signs are posted outside of all buildings on the State Fair grounds.

Retirement Systems

Case #1547

The complainant had worked for the State as a teacher for 27 years, and retired in June of 2008. In preparation for retirement, the complainant traveled to Lincoln to meet with State Retirement System personnel on June 18, 2008, in order to set his retirement plan in motion. The complainant received his last paycheck in August, although he had officially retired in June of, 2008. The complainant said that he was told in his June meeting with the State Retirement System that the retirement checks would begin arriving in July. Later, he was then told that the checks would start in September. Now, it is mid-September and to date, the complainant has not received any retirement checks from the State of Nebraska. The complainant says that other teachers who had retired in June had already begun to receive their retirement checks in July.

Public Service Commission

Case #406

The complainant has repeatedly complained about the cab service in her city. She says that she has been stranded once or twice after a cab took her to a location, but would not come and pick her up from the location where they had dropped her off. In Nebraska, cab companies are regulated by the Public Service Commission. The complainant says that she has complained to the Public Service Commission about this, but she is having problems with the Commission's investigator. She says that the investigator believes the cab drivers over what she is telling him. She would like the Commission to do a better, more thorough job in responding to consumer complaints.

It is emphasized that the complaints that have been described in this section can be appropriately characterized as being routine cases of the Office of the Public Counsel. Many of the complaint cases worked on by the Public Counsel's Office in 2008 were similar, in many respects, to those which are described here. On the other hand, many other complaint cases that were handled by the Office of the Public Counsel in the last year were substantially different in subject matter, and some presented issues that were more complex, requiring elaborate investigative efforts.

STATISTICAL ANALYSIS

The following tables illustrate the size, nature, and distribution of the caseload of the Nebraska Public Counsel's Office for 2008. In 2008, the Public Counsel's total caseload was 2,114 cases. This caseload total is down somewhat from 2007, but is basically consistent with the annual caseloads pattern recorded by the office over the previous nine years.

With the exception of 2002, when the Public Counsel's caseload was almost 2,500 cases, a high mark mostly due to influx of cases resulting from the implementation of the State's new child support enforcement system, the total caseload figures for the Public Counsel's Office have been very consistent since 1999. In that period, the Public Counsel's Office has recorded the following annual caseloads:

1999	-	2,224 cases
2000	-	2,206 cases
2001	-	2,202 cases
2002	-	2,482 cases
2003	-	2,291 cases
2004	-	2,290 cases
2005	-	2,174 cases
2006	-	2,290 cases
2007	-	2,250 cases

Given the enhancement of the Public Counsel's jurisdiction to cover local jails, we would expect that the 2009 caseload will fall somewhere in the higher level of this well established range.

TABLE 1
SUMMARY OF CONTACTS 2008

<u>Month</u>	<u>Total Inquiries</u>	<u>Information</u>	<u>Complaints</u>
January	197	19	178
February	182	17	165
March	187	22	165
April	179	18	161
May	173	20	153
June	180	22	158
July	182	19	163
August	185	12	173
September	180	24	156
October	163	19	144
November	144	17	127
December	162	18	144
TOTAL	2114	227	1887
Percent of Total Contacts	100%	11%	89%

**TABLE 2
OMBUDSMAN CONTACTS 2008**

	Total Logged Inquiries	Total Logged Complaint	Pending Complaint	Justified	Unjustified	Partially Justified	Discontinued	No Jurisdiction	No Jurisdiction But Assisted	Total Logged Information	Info Cases Pending
January	197	178	0	32	53	42	17	9	9	19	0
February	182	165	0	23	51	30	21	8	10	17	0
March	187	165	0	28	44	39	17	7	11	22	0
April	179	161	0	28	38	44	19	7	8	18	0
May	173	153	0	22	44	46	16	6	10	20	0
June	180	158	0	26	54	45	16	4	10	22	0
July	182	163	1	29	53	55	15	6	4	19	0
August	185	173	0	24	67	48	19	7	8	12	0
September	180	156	0	15	46	52	29	5	8	24	0
October	163	144	0	20	51	43	21	5	2	19	0
November	144	127	1	22	46	34	13	4	7	17	0
December	162	144	2	32	45	39	9	2	15	18	0
TOTAL	2114	1887	4	301	592	517	212	70	102	227	0

% of TOTAL	100%	89%	0%	14%	28%	24%	10%	3%	5%	11%	0%
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**TABLE 3
ANALYSIS OF NO-JURISDICTION CASES - 2008**

	Total No Jurisdiction Cases	Federal Jurisdiction	County Jurisdiction	Municipal Jurisdiction	Other Subdivisions of Government	Legislative or Policy Issues	Issues Before Courts	Private Matters Between Individuals	Issues Involving Governor or Staff
January	22	0	4	0	0	0	7	7	0
February	23	1	10	0	1	0	5	3	0
March	24	0	5	1	2	0	5	7	0
April	18	2	4	0	0	0	4	6	0
May	17	0	3	2	1	0	5	2	0
June	21	1	3	1	1	2	4	9	0
July	10	0	0	2	0	0	3	5	0
August	15	1	2	0	3	0	4	5	0
September	13	0	0	1	1	0	5	6	0
October	7	1	1	0	0	1	3	1	0
November	11	1	0	1	1	0	4	4	0
December	17	0	3	0	0	2	6	6	0
TOTAL	198	7	35	8	10	5	55	61	0

PERCENT	100%	4%	18%	4%	5%	3%	28%	31%	0%
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**TABLE 4
MEANS OF RECEIPT AND LOCATION 2008**

MONTH	Location					Means of Receipt				
	Metropolitan Lincoln	Metropolitan Omaha	Non Metropolitan	Out Of State	State Instiution	Letter	Visit	Telephone	Email	Fax
January	33 2	12 2	30 7	2 4	101 4	94 3	5 0	63 10	12 5	0 0
February	27 4	6 0	26 9	9 3	97 2	85 3	7 0	59 10	10 5	0 0
March	26 5	12 1	18 10	6 4	103 4	102 7	3 0	50 11	10 5	0 0
April	28 4	10 2	22 6	5 4	96 3	99 3	4 0	47 12	11 4	0 0
May	25 7	7 3	24 8	4 1	93 2	96 3	5 0	46 14	5 4	0 0
June	32 7	15 4	34 7	3 2	74 3	77 3	2 1	63 11	14 7	1 1
July	35 4	4 2	40 8	5 3	79 2	89 3	1 1	60 10	10 5	3 0
August	30 1	10 1	36 5	3 4	94 1	102 3	3 0	53 4	12 5	3 0
September	26 6	17 2	24 9	5 1	84 6	99 7	4 0	41 14	12 3	0 0
October	29 2	11 0	26 8	7 3	71 6	83 5	2 0	48 9	9 5	2 0
November	25 2	6 0	26 8	2 4	68 3	72 3	4 0	41 7	8 7	2 0
December	16 3	14 1	25 6	2 1	87 7	85 9	6 0	43 4	10 5	0 0
TOTAL	332 47	124 18	331 91	53 34	1047 43	1083 52	46 2	614 116	123 60	11 1

* C = Complaints, I = Information

TABLE 5
OFFICE OF THE OMBUDSMAN - 2008 AGENCY CONTACTS

AGENCY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
Accountability & Disclosure	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Services	2	4	2	0	0	3	1	3	1	1	1	2	20
Aging	0	0	2	1	2	1	0	0	0	0	0	0	6
Agriculture	0	1	1	0	0	0	0	0	0	0	0	0	2
Arts Council	0	0	1	0	0	0	0	0	0	0	0	0	1
Attorney General	0	1	2	0	0	0	0	0	0	0	0	1	4
Auditor	1	0	1	1	0	0	1	0	0	0	0	0	4
Banking	0	0	0	0	0	0	0	0	0	0	0	0	0
Brand Committee	0	0	1	0	0	0	0	0	0	0	0	0	1
Claims Board	0	0	2	0	0	0	0	0	0	0	0	0	2
Corrections	97	96	27	10	10	58	79	91	88	70	65	87	778
County	10	9	1	1	2	2	0	1	2	1	1	2	32
Courts	11	6	0	0	0	2	4	6	3	5	4	2	43
Crime Commission	1	0	3	1	0	0	1	0	0	0	0	0	6
Economic Development	0	0	0	0	0	0	0	1	0	0	0	0	1
Ed. Lands & Funds	0	0	0	0	0	0	0	0	0	1	0	0	1
Education	1	0	0	0	0	0	2	0	2	0	0	0	5
Environmental Quality	0	0	1	0	0	1	0	0	0	0	0	1	3
Equal Opportunity	1	0	1	1	0	1	1	0	1	2	0	0	8
Ethanol Authority	0	0	0	0	0	0	0	0	0	0	0	0	0
Educational Television	0	0	0	0	0	0	0	0	0	0	0	0	0
Fair Board	0	0	0	0	0	0	0	0	1	0	0	0	1
Federal	1	4	0	0	0	0	2	2	1	1	1	0	12
Fire Marshal	0	0	0	0	0	0	1	1	0	0	2	0	4
Foster Care Rev Bd	1	0	0	0	0	0	0	0	2	1	0	0	4
Game and Parks	0	0	0	0	1	1	0	1	0	1	0	0	4

Governmental Subdivision	0	0	1	0	0	1	0	1	0	1	1	0	5
Governor	0	0	0	0	0	0	0	0	0	0	0	0	0
Health	0	0	0	0	0	0	0	0	0	0	0	0	0
Hearing Impaired	0	0	0	0	0	0	0	0	0	0	0	1	1
HHS Benefits	5	5	3	0	0	3	14	13	11	15	6	6	81
HHS BSDC	0	1	0	0	0	0	1	0	1	0	1	2	6
HHS Child Welfare	16	21	5	1	1	7	16	12	17	21	14	14	145
HHS Misc	16	10	0	0	0	9	7	10	6	0	7	2	67
HHS Regional Centers	8	2	0	0	0	8	10	6	10	4	6	8	62
HHS Regulation	4	0	0	0	0	5	2	0	1	3	1	0	16
HHS Vets Homes	2	0	1	0	0	0	1	1	1	1	0	0	7
HHS Visually Impaired	0	0	0	0	0	0	0	0	0	0	0	0	0
Historical Society	0	0	0	0	0	0	0	0	0	0	0	0	0
Indian Comm	0	0	0	0	0	0	0	0	0	1	0	0	1
Institutions	0	0	0	0	0	0	0	0	0	0	0	0	0
Insurance	1	1	0	0	0	0	1	0	0	0	0	0	3
Investment Council	0	0	0	0	0	0	0	0	0	0	0	0	0
Labor	3	1	0	0	0	5	3	0	1	0	1	3	17
Legislative	7	5	3	2	0	11	5	5	7	7	7	7	66
Library Comm	0	0	0	0	0	0	0	0	0	0	0	0	0
Liquor Control	0	0	0	0	0	0	0	0	0	0	0	0	0
Mexican Amer Comm	0	0	0	0	0	1	1	0	0	0	0	0	2
Motor Vehicles	4	5	1	0	0	1	2	2	1	1	0	1	18
Mtr Veh Dealers Lic Bd	0	0	0	0	0	1	0	1	0	0	0	0	2
Municipal	0	2	0	0	0	1	2	0	1	0	3	0	9
National Guard	0	0	0	0	0	0	0	0	0	1	0	0	1
Natural Resources	0	1	0	0	0	0	0	0	0	0	1	0	2
Pardons Board	0	0	0	0	0	0	0	0	0	1	0	1	2
Parole Board	1	2	2	0	0	2	2	4	0	0	1	2	16

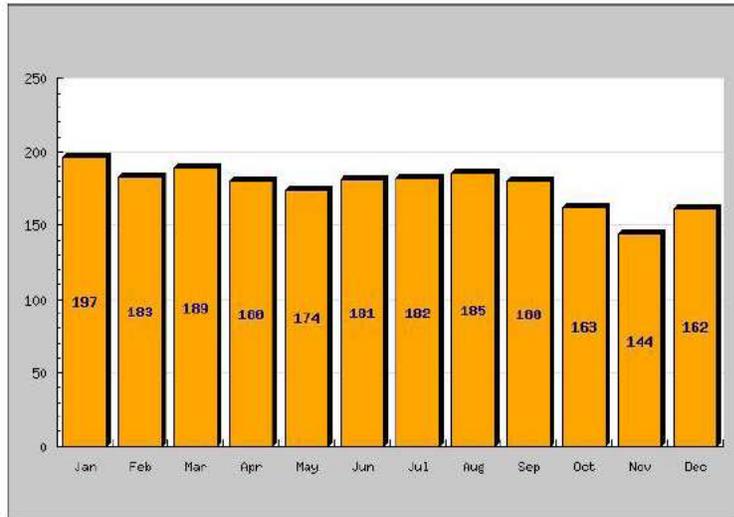
Patrol	2	0	0	0	0	2	0	0	1	1	0	0	6
Personnel	0	0	0	0	0	0	0	0	0	0	0	0	0
Private Matter	7	6	1	0	1	3	3	5	5	2	4	4	41
Probation Adm	0	0	0	0	0	0	1	0	0	0	0	0	1
Public Service Comm	0	0	1	0	0	0	0	0	1	0	0	0	2
Real Estate Comm	1	0	0	0	0	0	0	0	0	0	0	0	1
Retirement Systems	1	1	0	0	0	0	0	0	1	2	1	0	6
Revenue	1	1	0	0	0	0	1	0	3	0	0	0	6
Risk Management	0	0	0	0	0	0	0	0	0	0	0	0	0
Roads	0	0	0	0	1	2	1	1	0	0	0	0	5
Secretary of State	0	1	0	0	0	1	1	2	0	0	0	0	5
St. Board of Equalization	0	0	0	0	0	0	0	0	0	0	0	0	0
St. Surveyor	0	0	0	0	0	0	0	0	0	0	0	0	0
State Colleges	0	1	0	0	0	0	0	0	0	0	0	0	1
Status of Women	0	0	0	0	0	0	0	0	0	0	0	0	0
Electrical Division	0	0	0	0	0	0	0	0	0	0	0	0	0
Treasurer	2	1	1	0	0	1	1	1	1	3	4	2	17
University	2	2	0	0	0	2	3	1	2	1	2	1	16
Veterans Affairs	1	0	0	0	0	1	1	0	1	0	1	0	5
Commission for the Blind	2	1	0	0	0	1	0	0	1	1	0	0	6
Racing Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
Capitol Commission	0	0	0	0	0	0	0	0	0	0	1	0	1
HHS-Juv Justice	0	0	0	0	0	0	0	0	1	0	0	0	1
HHS-Juv Justice - Geneva	2	0	2	0	0	1	0	1	0	2	1	0	9
HHS Juv Justice-Kearney	0	0	0	0	0	1	0	1	1	0	1	0	4
County Jail	0	0	0	0	0	5	13	11	5	15	5	7	61
Athletic Commission	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTALS CASES	221	202	70	19	18	144	184	184	181	166	143	156	1688
Board of Public Accountancy	0	0	0	0	0	0	0	0	0	0	0	0	0

(NOTE: Case totals in this table are greater than the sum of all cases because a single case may involve in multiple agencies.)

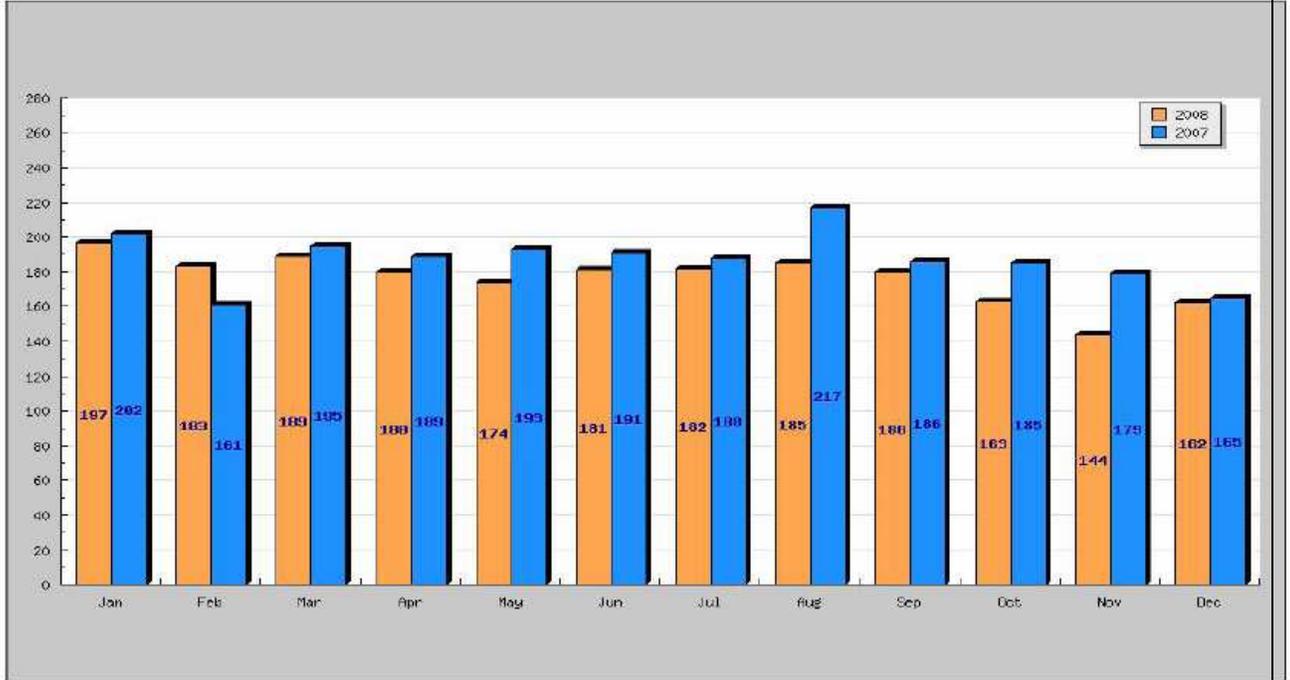
TABLE 6
CASE DURATION REPORT 2008

Days Open	Record Count	% of Total
1	329	16%
2	101	5%
3	87	4%
4	83	4%
5	83	4%
6	101	5%
7	83	4%
8	81	4%
9	39	2%
10	44	2%
11	41	2%
12	37	2%
13	58	3%
14	44	2%
15	41	2%
16	24	1%
17	18	1%
18	19	1%
19	25	1%
20	26	1%
21 to 30	143	7%

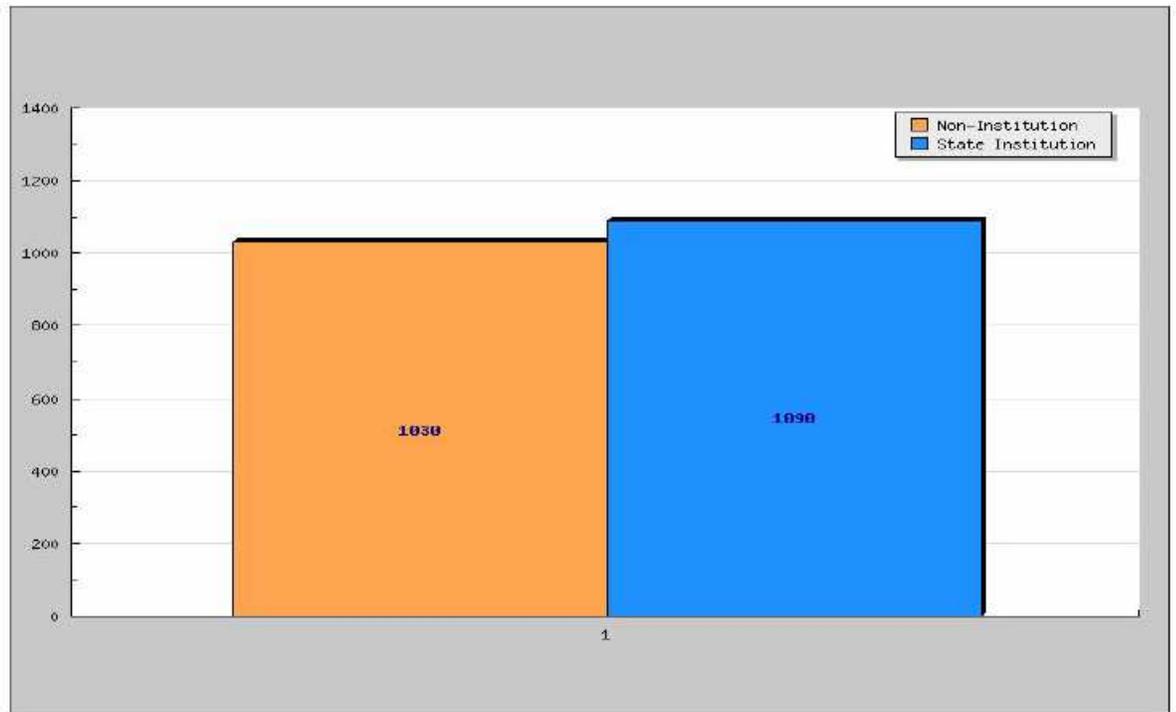
TOTAL NEW CASES BY MONTH - 2008



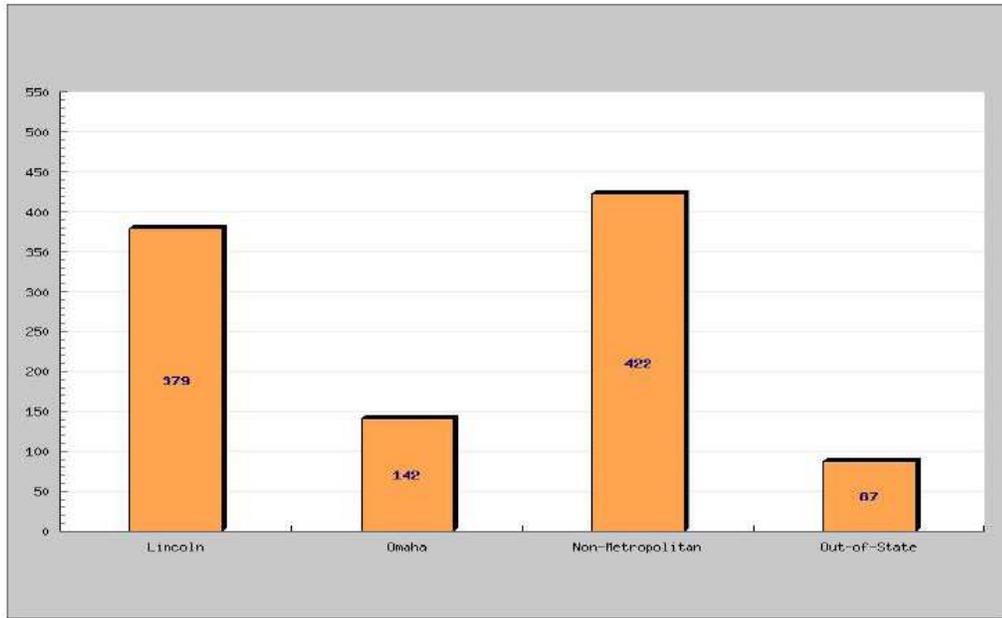
TOTAL NEW CASES
Monthly Comparisons for - 2007 and 2008



Non-Institution VS. State Institution Cases -2008



Non-Institution Cases By Location -2008



APPENDIX A

PUBLIC COUNSEL ACT

81-8,240. As used in sections 81-8,240 to 81-8,254, unless the context otherwise requires:

- (1) Administrative agency shall mean any department, board, commission, or other governmental unit, any official, or any employee of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska, or any corporation, partnership, business, firm, governmental entity, or person who is providing health and human services to individuals under contract with the State of Nebraska and who is subject to the jurisdiction of the office of the Public Counsel as required by section 73-401; but shall not include (a) any court, (b) any member or employee of the Legislature or the Legislative Council, (c) the Governor or his personal staff, (d) any political subdivision or entity thereof, (e) any instrumentality formed pursuant to an interstate compact and answerable to more than one state, or (f) any entity of the federal government; and
- (2) Administrative act shall include every action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an administrative agency.

81-8,241. The office of Public Counsel is hereby established to exercise the authority and perform the duties provided by sections 81-8,240 to 81-8,254. The Public Counsel shall be appointed by the Legislature, with the vote of two-thirds of the members required for approval of such appointment from nominations submitted by the Executive Board of the Legislative Council.

81-8,242. The Public Counsel shall be a person well equipped to analyze problems of law, administration, and public policy, and during his term of office shall not be actively involved in partisan affairs. No person may serve as Public Counsel within two years of the last day on which he served as a member of the Legislature, or while he is a candidate for or holds any other state office, or while he is engaged in any other occupation for reward or profit.

81-8,243. The Public Counsel shall serve for a term of six years, unless removed by vote of two-thirds of the members of the Legislature upon their determining that he has become incapacitated or has been guilty of neglect of duty or misconduct. If the office of Public Counsel becomes vacant for any cause, the deputy public counsel shall serve as acting public counsel until a Public Counsel has been appointed for a full term. The Public Counsel shall receive such salary as is set by the Executive Board of the Legislative Council.

81-8,244. The Public Counsel may select, appoint, and compensate as he may see fit, within the amount available by appropriation, such assistants and employees as he may deem necessary to discharge his responsibilities under sections 81-8,240 to 81-8,254. He shall appoint and designate one of his assistants to be a deputy public counsel, and another assistant to be a deputy public counsel for corrections, and one assistant to be a deputy public counsel for welfare services. Such deputy public counsels shall be subject to the control and supervision of the Public Counsel. The authority of the deputy public counsel for corrections shall extend to all facilities and parts of facilities, offices, houses of confinement, and institutions which are operated by the Department of Correctional Services. The authority of the deputy public counsel for welfare services shall extend to all complaints pertaining to administrative acts of administrative agencies when those acts are concerned with the rights and interests of individuals involved in the welfare services system of the State of Nebraska. The Public Counsel may delegate to members of his staff any of his authority or duty under sections 81-8,240 to 81-8,254 except the power of delegation and the duty of formally making recommendations to administrative agencies or reports to the Governor or the Legislature.

81-8,245. The Public Counsel shall have power to:

- (1) Investigate, on complaint or on his or her own motion, any administrative act of any administrative agency;
- (2) Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of sections 81-8,240 to 81-8,254, determine the form, frequency, and distribution of his or her conclusions, recommendations, and proposals.
- (3) Conduct inspections of the premises, or any parts thereof, of any administrative agency or any property owned, leased, or operated by any administrative agency as frequently as is necessary, in his or her opinion, to carry out duties prescribed under sections 81-8,240 to 81-8,254;
- (4) Request and receive from each administrative agency, and such agency shall provide, the assistance and information the public counsel deems necessary for the discharge of his or her responsibilities; inspect and examine the records and documents of all administrative agencies notwithstanding any other provision of law; and enter and inspect premises within any administrative agency's control;
- (5) Issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district

courts of this state, and shall also be entitled to have counsel present while being questioned;

- (6) Undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he or she believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies; and
- (7) Make investigations, reports, and recommendations necessary to carry out his or her duties under the State Government Effectiveness Act.

81-8,246. In selecting matters for his attention, the Public Counsel shall address himself particularly to an administrative act that might be:

- (1) Contrary to law or regulation;
- (2) Unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's judgments;
- (3) Mistaken in law or arbitrary in ascertainment of fact;
- (4) Improper in motivation or based on irrelevant considerations;
- (5) Unclear or inadequately explained when reasons should have been revealed; or
- (6) Inefficiently performed.

The Public Counsel may concern himself also with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur.

81-8,247. The Public Counsel may receive a complaint from any person concerning an administrative act. He shall conduct a suitable investigation into the things complained of unless he believes that:

- (1) The complainant has available to him another remedy which he could reasonably be expected to use;
- (2) The grievance pertains to a matter outside his power;
- (3) The complainant's interest is insufficiently related to the subject matter;
- (4) The complaint is trivial, frivolous, vexatious, or not made in good faith;
- (5) Other complaints are more worthy of attention;

- (6) His resources are insufficient for adequate investigation; or
- (7) The complaint has been too long delayed to justify present examination of its merit.

The Public Counsel's declining to investigate a complaint shall not bar him from proceeding on his own motion to inquire into related problems. After completing his consideration of a complaint, whether or not it has been investigated, the Public Counsel shall suitably inform the complainant and the administrative agency involved.

81-8,248. Before announcing a conclusion or recommendation that expressly or impliedly criticizes an administrative agency or any person, the Public Counsel shall consult with that agency or person.

81-8,249.

- (1) If, having considered a complaint and whatever material he deems pertinent, the Public Counsel is of the opinion that an administrative agency should (a) consider the matter further (b) modify or cancel an administrative act, (c) alter a regulation or ruling, (d) explain more fully the administrative act in question, or (e) take any other step, he shall state his recommendations to the administrative agency. If the Public Counsel so requests, the agency shall, within the time he has specified, inform him about the action taken on his recommendations or the reasons for not complying with them.
- (2) If the Public Counsel believes that an administrative action has been dictated by a statute whose results are unfair or otherwise objectionable, he shall bring to the Legislature's notice his views concerning desirable statutory change.

81-8,250. The Public Counsel may publish his conclusions and suggestions by transmitting them to the Governor, the Legislature or any of its committees, the press, and others who may be concerned. When publishing an opinion adverse to an administrative agency he shall include any statement the administrative agency may have made to him by way of explaining its past difficulties or its present rejection of the Public Counsel's proposals.

81-8,251. In addition to whatever reports he may make from time to time, the Public Counsel shall on or about February 15 of each year report to the Clerk of the Legislature and to the Governor concerning the exercise of his functions during the preceding calendar year. In discussing matters with which he or she has dealt, the Public Counsel need not identify those immediately concerned if to do so would cause needless hardship. So far as the annual report may criticize named agencies or officials, it must include also their replies to the criticism. Each member of the Legislature shall receive a copy of such report by making a request for it to the Public Counsel.

81-8,252. If the Public Counsel has reason to believe that any public officer or employee has acted in a manner warranting criminal or disciplinary proceedings, he shall refer the matter to the appropriate authorities.

81-8,253. No proceeding, opinion, or expression of the Public Counsel shall be reviewable in any court. Neither the Public Counsel nor any member of his staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his official cognizance, except in a proceeding brought to enforce sections 81-8,240 to 81-8,254.

81-8,254. A person who willfully obstructs or hinders the proper exercise of the Public Counsel's functions, or who willfully misleads or attempts to mislead the Public Counsel in his inquiries, shall be guilty of a Class II misdemeanor. No employee of the State of Nebraska, who files a complaint pursuant to sections 81-8,240 to 81-8,254, shall be subject to any penalties, sanctions, or restrictions in connection with his employment because of such complaint.

Bibliography

Anyone interested in learning more about the ombudsman concept as that concept has been implemented through the Nebraska Office of the Public Counsel is invited to read the following materials:

Frank, *The Nebraska Public Counsel - The Ombudsman*,
5 Cumberland - Samford L. Rev. 30 (1974).

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Miewald and Comer, "Complaining As Participation: The Case of the Ombudsman." *Administration and Society* 17 (February 1986): 481-499

Miewald and Comer, "The Nebraska Ombudsman: An American Pioneer." *International Handbook of the Ombudsman - Country Surveys*, edited by Gerald E. Caiden, Connecticut; Greenwood Press, 1983.

Wyner, *Complaint Resolution in Nebraska: Citizens, Bureaucrats and the Ombudsman*, 54 Neb. L. Rev. 1 (1975).

Wyner, *The Nebraska Ombudsman: Innovation in State Government*. Berkeley: Institute of Government Studies, University of California, 1974.