

LEGISLATIVE BILL 758

Approved by the Governor June 3, 1997

Introduced by Withem, 14

AN ACT relating to state officers; to amend sections 23-1201, 49-14,133, and 55-161.01, Reissue Revised Statutes of Nebraska, and sections 32-1548, 49-14,123, and 84-205, Revised Statutes Supplement, 1996; to provide duties for the Attorney General; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 23-1201, Reissue Revised Statutes of Nebraska, is amended to read:

23-1201. (1) Except as provided in section 29-3602 and subdivision (2) of section 84-205, it shall be the duty of the county attorney, when in possession of sufficient evidence to warrant the belief that a person is guilty and can be convicted of a felony or misdemeanor, to prepare, sign, verify, and file the proper complaint against such person and to appear in the several courts of the county and prosecute the appropriate criminal proceeding on behalf of the state and county. Prior to reaching a plea agreement with defense counsel, the county attorney shall consult with or make a good faith effort to consult with the victim regarding the content of and reasons for such plea agreement. The county attorney shall record such consultation or effort in his or her office file.

(2) It shall be the duty of the county attorney to prosecute or defend, on behalf of the state and county, all suits, applications, or motions, civil or criminal, arising under the laws of the state in which the state or the county is a party or interested. The county attorney may be directed by the Attorney General to represent the state in any action or matter in which the state is interested or a party. When such services require the performance of duties which are in addition to the ordinary duties of the county attorney, he or she shall receive such fee for his or her services, in addition to the salary as county attorney, as (a) the court shall order in any action involving court appearance or (b) the Attorney General shall authorize in other matters, with the amount of such additional fee to be paid by the state. It shall also be the duty of the county attorney to appear and prosecute or defend on behalf of the state and county all such suits, applications, or motions which may have been transferred by change of venue from his or her county to any other county in the state. Any counsel who may have been assisting the county attorney in any such suits, applications, or motions in his or her county may be allowed to assist in any other county to which such cause has been removed. The county attorney shall file the annual inventory statement with the county board of county personal property in his or her possession as provided in sections 23-346 to 23-350. It shall be the further duty of the county attorney of each county, within three days from the calling to his or her attention of any violation of the requirements of the law concerning annual inventory statements from county officers, to institute proceedings against such offending officer and in addition thereto to prosecute the appropriate action to remove such county officer from office. When it is the county attorney who is charged with failure to comply with this section, the Attorney General of Nebraska may bring the action. It shall be the duty of the county attorney to make a report on the tenth day of each quarter to the county board which shall show final disposition of all criminal cases the previous quarter, criminal cases pending on the last day of the previous quarter, and criminal cases appealed during the past quarter. The county board in counties having less than two hundred thousand population may waive the duty to make such report.

Sec. 2. Section 32-1548, Revised Statutes Supplement, 1996, is amended to read:

32-1548. Except as provided in subdivision (2) of section 84-205, the county attorney of any county in this state shall prosecute all complaints which may be made of violations of any of the provisions of the Election Act to final judgment. The court before which any conviction for such violation shall be had shall not in any case suspend sentence or judgment for more than twenty days, except that no indictment or information for such violation shall be brought to trial unless the complainant, if he or she is found, has had at least two days' notice, in writing, from the county attorney of the day when he or she intends to try the same.

Sec. 3. Section 49-14,123, Revised Statutes Supplement, 1996, is

amended to read:

49-14,123. In addition to any other duties prescribed by law, the commission shall:

(1) Prescribe and publish, after notice and opportunity for public comment, rules and regulations to carry out the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act pursuant to the Administrative Procedure Act;

(2) Prescribe forms for statements and reports required to be filed pursuant to the Campaign Finance Limitation Act and the Nebraska Political Accountability and Disclosure Act and furnish such forms to persons required to file such statements and reports;

(3) Prepare and publish one or more manuals explaining the duties of all persons and other entities required to file statements and reports by the acts and setting forth recommended uniform methods of accounting and reporting for such filings;

(4) Accept and file any reasonable amount of information voluntarily supplied that exceeds the requirements of the acts;

(5) Make statements and reports filed with the commission available for public inspection and copying during regular office hours and make copying facilities available at a cost of not more than fifty cents per page;

(6) Compile and maintain an index of all reports and statements filed with the commission to facilitate public access to such reports and statements;

(7) Prepare and publish summaries of statements and reports filed with the commission and special reports and technical studies to further the purposes of the acts;

(8) Review all statements and reports filed with the commission in order to ascertain whether any person has failed to file a required statement or has filed a deficient statement;

(9) Preserve statements and reports filed with the commission for a period of not less than five years from the date of receipt;

(10) Issue and publish advisory opinions on the requirements of the acts upon the request of a person or governmental body directly covered or affected by the acts. Any such opinion rendered by the commission, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the person or public body who requested the opinion and who acted in reliance on it in good faith unless material facts were omitted or misstated by the person in the request for the opinion;

(11) Act as the primary civil and criminal enforcement agency for violations of the Nebraska Political Accountability and Disclosure Act and the rules or regulations promulgated thereunder and act concurrently with the county attorney Attorney General in prosecuting criminal violations of the Campaign Finance Limitation Act;

(12) Receive all late filing fees and civil penalties imposed pursuant to the Nebraska Political Accountability and Disclosure Act, seek the return of any amount as provided in section 32-1606, and seek the repayment of any amount as provided in section 32-1607 and remit all such funds to the State Treasurer for credit to the Campaign Finance Limitation Cash Fund; and

(13) Prepare and distribute to the appropriate local officials statements of financial interest, campaign committee organization forms, filing instructions and forms, and such other forms as the commission may deem appropriate.

Sec. 4. Section 49-14,133, Reissue Revised Statutes of Nebraska, is amended to read:

49-14,133. The Attorney General and the county attorney of the county in which a violation allegedly occurs shall have concurrent jurisdiction with the commission to enforce the criminal provisions of sections 49-1401 to 49-14,138 the Nebraska Political Accountability and Disclosure Act.

Sec. 5. Section 55-161.01, Reissue Revised Statutes of Nebraska, is amended to read:

55-161.01. Any person who feels that his or her employment rights under the provisions of section 55-161 have been violated may file complaint with respect thereto with the Commissioner of Labor. Such complaint shall not be subject to formal requirements but shall be sufficient if it identifies the parties involved and the right or rights alleged to have been violated. The commissioner shall promptly investigate each such complaint and if he or she finds that the allegations thereof are true he or she shall issue his or her order to the offending party directing the granting to complainant of all his or her rights under section 55-161, including the granting of backpay from the date the violation occurred. If such order has not been complied with within ten days after its mailing, by registered or certified mail, the commissioner

may file suit in the district court for the county in which the alleged violation occurred for a writ of mandamus ordering the granting of the rights wrongfully denied together with backpay from the date the violation occurred. Such suit shall be determined by the court as expeditiously as practicable. The court shall enter such order as the evidence shows to be appropriate, including, in cases of flagrant violations of rights, the removal from office or employment of the person or persons responsible therefor when such removal is permitted by the Constitution of the State of Nebraska. In any such suit or in any appeal from the decision of the district court, the commissioner may employ private counsel with the written authorization required by subdivision ~~(4)~~ (5) of section 84-205. A reasonable fee for such counsel shall be allowed by the court in any case in which a decision favorable to the commissioner is rendered.

Sec. 6. Section 84-205, Revised Statutes Supplement, 1996, is amended to read:

84-205. The duties of the Attorney General shall be:

(1) To appear and defend actions and claims against the state;

~~(2) To investigate, commence, and prosecute any and all actions resulting from violations of sections 32-1401 to 32-1417;~~

~~(3)~~ (3) To consult with and advise the county attorneys, when requested by them, in all criminal matters and in matters relating to the public revenue. He or she shall have authority to require aid and assistance of the county attorney in all matters pertaining to the duties of the Attorney General in the county of such county attorney and may, in any case brought to the Court of Appeals or Supreme Court from any county, demand and receive the assistance of the county attorney from whose county such case is brought;

~~(3)~~ (4) To give, when required, without fee, his or her opinion in writing upon all questions of law submitted to him or her by the Governor, head of any executive department, Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, Public Service Commission, or Legislature;

~~(4)~~ (5) At the request of the Governor, head of any executive department, Secretary of State, State Treasurer, Auditor of Public Accounts, Board of Educational Lands and Funds, State Department of Education, or Public Service Commission, to prosecute any official bond or any contract in which the state is interested which is deposited with any of them and to prosecute or defend for the state all civil or criminal actions and proceedings relating to any matter connected with any of such officers' departments if, after investigation, he or she is convinced there is sufficient legal merit to justify the proceeding. Such officers shall not pay or contract to pay from the funds of the state any money for special attorneys or counselors-at-law unless the employment of such special counsel is made upon the written authorization of the Governor or the Attorney General;

~~(5)~~ (6) To enforce the proper application of money appropriated by the Legislature to the various funds of the state and prosecute breaches of trust in the administration of such funds;

~~(6)~~ (7) To prepare, when requested by the Governor, Secretary of State, State Treasurer, or Auditor of Public Accounts or any other executive department, proper drafts for contracts, forms, or other writings which may be wanted for the use of the state and report to the Legislature, whenever requested, upon any business pertaining to the duties of his or her office;

~~(7)~~ (8) To pay all money received, belonging to the people of the state, immediately upon receipt thereof, into the state treasury;

~~(8)~~ (9) To keep a record in proper books provided for that purpose at the expense of the state, a register of all actions and demands prosecuted or defended by him or her in behalf of the state and all proceedings had in relation thereto, and deliver the same to his or her successor in office;

~~(9)~~ (10) To appear for the state and prosecute and defend all civil or criminal actions and proceedings in the Court of Appeals or Supreme Court in which the state is interested or a party. When requested by the Governor or the Legislature, the Attorney General shall appear for the state and prosecute or defend any action or conduct any investigation in which the state is interested or a party before any court, officer, board, tribunal, or commission;

~~(10)~~ (11) To prepare and promulgate model rules of procedure appropriate for use by as many agencies as possible. The Attorney General shall add to, amend, or revise the model rules as necessary for the proper guidance of agencies; and

~~(11)~~ (12) To create a Child Protection Division to be staffed by at least three assistant attorneys general who each have five or more years of experience in the prosecution or defense of felonies or misdemeanors, including two years in the prosecution or defense of crimes against children.

Upon the written request of a county attorney, the division shall provide consultation and advise and assist in the preparation of the trial of any case involving a crime against a child, including, but not limited to, the following offenses:

- (a) Murder as defined in sections 28-303 and 28-304;
- (b) Manslaughter as defined in section 28-305;
- (c) Kidnapping as defined in section 28-313;
- (d) False imprisonment as defined in sections 28-314 and 28-315;
- (e) Child abuse as defined in section 28-707;
- (f) Pandering as defined in section 28-802;
- (g) Debauching a minor as defined in section 28-805; and
- (h) Offenses listed in sections 28-813, 28-813.01, and 28-1463.03.

Any offense listed in subdivisions (a) through (h) of this subdivision shall include all inchoate offenses pursuant to the Nebraska Criminal Code and compounding a felony pursuant to section 28-301. Such crimes shall not include matters involving dependent and neglected children, infraction violations, custody or visitation matters, or child support. If the county attorney declines in writing to prosecute a case involving a crime against a child because of an ethical consideration, including the presence or appearance of a conflict of interest, or for any other reason, the division shall, upon the receipt of a written request of the county attorney, the Department of Health and Human Services, the minor child, the parents of the minor child, or any other interested party, investigate the matter and either decline to prosecute the matter or initiate the appropriate criminal proceedings in a court of proper jurisdiction.

For purposes of this subdivision, child or children shall mean an individual or individuals sixteen years of age or younger.

Sec. 7. Original sections 23-1201, 49-14,133, and 55-161.01, Reissue Revised Statutes of Nebraska, and sections 32-1548, 49-14,123, and 84-205, Revised Statutes Supplement, 1996, are repealed.