

NEBRASKA LEGISLATURE
EDUCATION COMMITTEE

INTERIM STUDY FINAL REPORT

LEGISLATIVE RESOLUTION 388
December 12, 2008

TABLE OF CONTENTS

Purpose and Study Outline	3
Findings.....	4
Relevant Articles of the Nebraska Constitution.....	7
Commissioner of Education: Qualifications.....	8
Commissioner of Education: Duties.....	8
State Board Members: Qualifications.....	11
State Board Members: Duties.....	11
Line of Authority between the State Board and Commissioner.....	15
<i>Commissioner as “Secretary of the Board”</i>	15
<i>State Board Ability to Meet Without the Commissioner</i>	15
<i>Ability of the Commissioner to act Contrary to State Board Policy</i>	16
Other Powers & Duties.....	16
<i>Statutory</i>	16
<i>As A Matter of Practice</i>	16
Role and Relationship Among Branches of Government.....	17
Overview of Regulation Process.....	18
Appendix A:	21
Constitutional References to State Department of Education, State Board and Commissioner of Education	21
Appendix B:.....	23
Statutory Powers and Duties of the State Board of Education and the Commissioner of Education	23
Appendix C:	45
Historical Notes.....	45
Appendix D:.....	54
Nebraska Administrative Procedure Act.....	54

INTERIM STUDY

FINAL REPORT

LEGISLATIVE RESOLUTION 388

PURPOSE AND STUDY OUTLINE

The stated purpose of the interim study resolution is “to review the constitutional references to and the statutory powers and duties of the State Board of Education and the Commissioner of Education.” The resolution states several specific points to include in the study effort. These are as follows:

1. Qualifications for the Commissioner of Education;
2. Duties of the Commissioner of Education;
3. Qualifications for members of the State Board of Education;
4. Duties of the State Board of Education;
5. Line of authority between the state board and the commissioner, to include powers and duties that are shared by, granted to, or constitutionally established for each;
6. The statutory role of the commissioner as “secretary of the board”;
7. The ability of the state board to meet without the commissioner;
8. The ability of the commissioner to act in his or her official capacity contrary to board policy;
9. The rationale for the statutory power of the commissioner to “decide disputed points of school law” granted under section 79-305;
10. Other powers and duties specifically described in statute or assumed as a matter of practice; and
11. The role and relationship among the branches of government impacting education policy.

This report attempts to address each of the points by examining relevant constitutional and statutory references. A preliminary report was shared with members of the state board, the Commissioner and Department of Education staff for input. A meeting of representatives of the State Board of Education, Department of Education, and the Education Committee met on November 11, 2008 to discuss the report and possible legislation.

FINDINGS

1. Qualifications for the Commissioner of Education;
 - a. The qualifications for the position of Commissioner of Education were established in statute in 1953 and were significantly based on the administrative role of the State Superintendent of public instruction.
 - b. The qualifications included a requirement that the commissioner qualify for the highest administrative certificate in the state.
2. Duties of the Commissioner of Education;
 - a. Similar to the qualifications for Commissioner, many of the duties were originally established in statute in 1953.
3. Qualifications for members of the State Board of Education;
 - a. There are few qualifications except that a member of the state board can not be actively engaged in the teaching profession or hold other elected office or be a candidate for other elected office.
4. Duties of the State Board of Education;
 - a. Since the establishment of the state board, it is clear that it was intended to be the policy-forming entity for the Department of Education.
 - b. According to the constitution, their duties and powers are to be prescribed by the Legislature and the only constitutionally described duty is to appoint and fix the compensation of the commissioner.
 - c. All other duties are described in statute.
5. Line of authority between the state board and the commissioner, to include powers and duties that are shared by, granted to, or constitutionally established for each;
 - a. The line of authority between the state board and the commissioner is akin to a school board and a superintendent.
 - b. The 1952 constitutional amendment was clearly designed to separate the various roles of the State Superintendent. State Supt. Reed in 1949 wrote promoting the need for a state board of education: “In the absence of a State Board of Education, the Chief State School Officer not only has the responsibility for administering the State’s education program, but also for formulating the policy for such a program within the framework of constitutional and statutory provisions. It is generally recognized that this places undue responsibility upon the State School Officer.”
 - c. The line of authority would seem to be clearly that the elected board members are to craft policy “within the framework of constitutional and statutory provisions” and the commissioner is to administer the state’s education program.
6. The statutory role of the commissioner as “secretary of the board”;
 - a. This reference is likely to be similar to the relationship that developed between school board and superintendents in the modern administration of schools although no specific legislative history was found in reference to that role.
7. The ability of the state board to meet without the commissioner;

- a. No historical references were found regarding this issue although it would have been a part of the 1953 law. It could be speculated that there was an attempt to ensure that the state board and commissioner would work together and not result in two separate education entities.
8. The ability of the commissioner to act in his or her official capacity contrary to board policy;
 - a. According to statute, the commissioner acts under the authority of the board and is required to carry out the requirements of law and of board policies, standards, rules, and regulations and for providing the educational leadership and services deemed necessary by the board for the proper conduct of the state school program.
9. The rationale for the statutory power of the commissioner to “decide disputed points of school law” granted under section 79-305;
 - a. This power would seem to be an artifact of the early years and decades of the office of State Superintendent. The history demonstrates that over time the State Superintendent properly involved the attorney general and eventually sought changes in state statute that minimized this power. Additionally the development of modern administrative law has basically made this impracticable and irrelevant.
10. Other powers and duties specifically described in statute or assumed as a matter of practice;
 - a. There are any number of specific powers and duties assigned to the Department of Education, State Board, and Commissioner in statute. The role of the Department has expanded through statutory requirements and federal regulation.
 - b. Most powers and duties are enumerated in statute. This may be a result of powers and duties that are developed as a matter of practice are, out of necessity, eventually codified in statute.
11. The role and relationship among the branches of government impacting education policy.
 - a. The Department of Education, including the Commissioner and the State Board, are to “craft policy” within the scope of statutory and constitutional bounds. There is a long history of active participation of the State Superintendent recommending statutory changes. Now, that role continues through the State Board, Commissioner, and the Department of Education.
 - b. There is also a long history of the Legislature involving itself in education policy. In many cases, this was driven by recommendations of the chief state school officer and the State Board. This relationship does indicate that the executive branch nature of a state agency is that its powers and duties are substantially derived from statutory authority.
 - c. The Administrative Procedure Act requires that agencies adopt rules and regulations which are to be approved by the Attorney General and Governor. This is further reviewed for the Department of Education in the Nebraska Supreme Courts decision *School Dist. No. 8 of Sherman County v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458 (1964).
 - d. A 2005 law (LB 373) provides a procedure by which members of the Legislature may register a complaint about a rule or regulation that may conflict with legislative intent (See Neb. Rev. Statutes §84-907.10, 2007). Although the Legislature has few powers to directly impact the rule making process, it can propose to change law and the scope of authority granted to agencies.

12. Historical notes: (Additional notes can be found in Appendix C):

- a. The modern Department of Education, Commissioner of Education and State Board of Education were the result of a constitutional amendment in 1952. The motivations for that constitutional amendment and history surrounding its adoption were primarily driven by the expanding responsibilities placed on the State Superintendent of Public Instruction and the evolving nature of education at the time. Many states had adopted State Boards of Education. The primary push for the change was probably driven by the Department of Public Instruction and several key players. Notable among the group was F.B. Decker who was the last State Superintendent and the first Commissioner of Education in Nebraska. Decker was also a key player in a significant revision of the state school laws in 1949.
- b. The legislative response to the 1952 Constitutional amendment was to adopt LB 285 in 1953. The Legislature acted to amend statute to recognize the new department of education and to replace the State Superintendent of Public Instruction.
- c. The state board does not have particular qualifications other than election. Originally (1952) there were to be six members of the state board and that was increased to eight members with a 1966 constitutional amendment. A legislative council report issued in August, 1950 suggested that there be seven members with one elected at large and the other six by district.
- d. The role and duties of the early State Superintendents were much more about establishing and growing an educational system. It eventually became more about administration of an established system.
- e. The ability of the State Superintendent to interpret law was established by the Legislature in 1881. This was an element that was made necessary by the early development of districts and disputes that arose at that point in time. Eventually, state superintendents recognized that they would rely on the counsel of the Attorney General and court decisions (see 1919 school laws report.) This power however, remains in statute as an artifact of the transition to the modern department of education.
- f. Prior to and in the same context as the 1952 constitutional amendment and 1953 laws, there was also the rapid development of administrative procedure at the state and federal level. Nebraska adopted the first version of the Administrative Procedure Act in 1945 and the federal government did so in 1946.

RELEVANT ARTICLES OF THE NEBRASKA CONSTITUTION

The Nebraska Constitution was amended in 1952 to create the modern structure of the Nebraska Department of Education, the Nebraska State Board of Education and the position of the Commissioner of Education. Article VII § 2 through Article VII § 4 are quoted below as the relevant constitutional passages. Additionally, annotations to these sections are footnoted to a 1964 case in which the State Supreme Court ruled on relevant issues regarding powers granted to the state board by the constitution and by the Legislature.

Article VII-2

State Department of Education; general supervision of school system.

The State Department of Education shall be comprised of a State Board of Education and a Commissioner of Education. The State Department of Education shall have general supervision and administration of the school system of the state and of such other activities as the Legislature may direct.¹

Article VII-3

State Board of Education; members; election; manner of election; term of office.

The State Board of Education shall be composed of eight members, who shall be elected from eight districts of substantially equal population as provided by the Legislature. Their term of office shall be for four years each. Their duties and powers shall be prescribed by the Legislature, and they shall receive no compensation, but shall be reimbursed their actual expense incurred in the performance of their duties. The members of the State Board of Education shall not be actively engaged in the educational profession and they shall be elected on a nonpartisan ballot.²

Article VII-4

State Board of Education; Commissioner of Education; appointment; powers and duties.

The State Board of Education shall appoint and fix the compensation of the Commissioner of Education, who shall be the executive officer of the State Board of Education and the administrative head of the State Department of Education, and who shall have such powers and duties as the Legislature may direct. The board shall appoint all employees of the State Department of Education on the recommendation of the Commissioner of Education.

¹ Grant of administrative and executive power to the Department of Education is authorized. School Dist. No. 8 of Sherman County v. State Board of Education, 176 Neb. 722, 127 N.W.2d 458 (1964).

² Powers and duties of State Board of Education are prescribed by law. School Dist. No. 8 of Sherman County v. State Board of Education, 176 Neb. 722, 127 N.W.2d 458 (1964).

COMMISSIONER OF EDUCATION: QUALIFICATIONS

Qualifications for the Commissioner of Education are established in state statute. The Nebraska Constitution is silent on the qualifications for the commissioner except that the Commissioner is appointed by the State Board of Education in Article VII, Section 4.

The statutorily established qualifications for Commissioner of Education are found in Nebraska Revised Statutes Section 79-304 (2007) as follows:

The Commissioner of Education shall (1) be a person of superior educational attainments, (2) have had many years of experience, (3) have demonstrated personal and professional leadership in the administration of public education, and (4) be eligible to qualify for the highest grade of school administrator certificate currently issued in the state. (Neb. Rev. Statutes Section 79-304, 2008).

The qualifications would require that the Commissioner be eligible to be a school superintendent in the state of Nebraska. Those requirements are established in Title 92, Chapters 21 and 24 (Rules 21 and 24) of Nebraska Administrative Code, which is based on statutory authority established in Nebraska Revised Statutes Section 79-318 and Section 79-808. The details of the qualifications are essentially a “nested” set of requirements to be eligible to hold a professional administrative certificate. These requirements would require a valid teaching or administrative/supervisory (principal/curriculum supervisor) certificate and a minimum of sixty graduate semester hours in educational administration, completion of a specialist or doctoral program in educational administration and a one semester practicum. Most of the specific requirements are established in rule and not in statute. Statute requires that the board...

...establish, adopt, and promulgate appropriate rules, regulations, and procedures governing the issuance, renewal, conversion, suspension, and revocation of certificates and permits to teach, provide special services, and administer based upon (a) earned college credit in humanities, social and natural sciences, mathematics, or career and technical education, (b) earned college credit, or its equivalent in professional education, for particular teaching, special services, or administrative assignments, (c) criminal history record information if the applicant has not been a continuous Nebraska resident for five years immediately preceding application for the first issuance of a certificate, (d) human relations training, (e) successful teaching, administration, or provision of special services, and (f) moral, mental, and physical fitness for teaching, all in accordance with sound educational practices. (Neb. Rev. Stat. Sec. 79-808, 2008).

Although there are no specific requirements except that the commissioner be “eligible to qualify” for the administrative certificate, it is unclear if this eligibility could be established through the qualification of the provisional certificate allowed under Rule 21.

COMMISSIONER OF EDUCATION: DUTIES

The Constitution specifically states that the Commissioner is the executive officer of the State Board of Education and the administrative head of the State Department of Education. The Constitution is explicit that the powers and duties of the Commissioner are “as the Legislature may direct”.

Article VII, Section II of the Nebraska Constitution establishes the State Department of Education. The Department is "...comprised of a State Board of Education and a Commissioner of Education. The State Department of Education shall have general supervision and administration of the school system of the state and of such other activities as the Legislature may direct." The "general supervision and administration" of the school system is granted to the Department and the powers and duties of the Commissioner and the State Board are enumerated in statute.

Subsection 3 of Nebraska Revised Statutes Section 79-301 mentions some of the responsibilities of the commissioner as follows:

(3) The Commissioner of Education shall be the executive officer of the State Board of Education and the administrative head of the professional, technical, and clerical staff of the State Department of Education. The commissioner shall act under the authority of the State Board of Education. The commissioner shall have the responsibility for carrying out the requirements of law and of board policies, standards, rules, and regulations and for providing the educational leadership and services deemed necessary by the board for the proper conduct of the state school program. In the event of vacancy in office or the absence or incapacity of the Commissioner of Education, the deputy commissioner shall carry out all the duties imposed by law upon the commissioner. (Neb. Rev. Statutes § 79-301, 2008)

The mention of the deputy commissioner in this section is one of only three in either statute or the constitution. (See also §79-318 and §79-1315). The deputy commissioner would carry out all duties of the Commissioner in the absence or incapacity of the Commissioner.

There are numerous references to the Commissioner of Education that specify duties and responsibilities throughout Chapter 79 of Nebraska's Revised Statutes. The general description of the office, powers and duties of the Commissioner of Education are found in §79-305.

The Commissioner of Education as the executive officer of the State Board of Education shall:

- (1) Have an office in the city of Lincoln in which shall be housed the records of the State Board of Education and the State Department of Education, which records shall be subject at all times to examination by the Governor, the Auditor of Public Accounts, and committees of the Legislature;
- (2) keep the board currently informed and advised on the operation and status of all aspects of the educational program of the state under its jurisdiction;
- (3) prepare a budget for financing the activities of the board and the department, including the internal operation and maintenance of the department, and upon approval by the board administer the same in accordance with appropriations by the Legislature;
- (4) voucher the expenses of the department according to the rules and regulations prescribed by the board;
- (5) be responsible for promoting the efficiency, welfare, and improvement in the school system in the state and for recommending to the board such policies, standards, rules, and regulations as may be necessary to attain these purposes;
- (6) promote educational improvement by
 - (a) outlining and carrying out plans and conducting essential activities for the preparation of curriculum and other materials,

- (b) providing necessary supervisory and consultative services,
 - (c) holding conferences of professional educators and other civic leaders,
 - (d) conducting research, experimentation, and evaluation of school programs and activities, and
 - (e) in other ways assisting in the development of effective education in the state;
- (7) decide disputed points of school law, which decisions shall have the force of law until changed by the courts;
- (8) issue teachers' certificates according to the provisions of law and the rules and regulations prescribed by the board; and
- (9) attend or, in case of necessity, designate a representative to attend all meetings of the board except when the order of business of the board is the selection of a Commissioner of Education.

None of the duties prescribed in this section or in section 79-306 prevent the commissioner from exercising such other duties as in his or her judgment and with the approval of the board are necessary to the proper and legal exercise of his or her obligations.

One of the interim study resolution points to be considered is the language among the powers and duties listed in § 79-305 that enables the Commissioner of Education to decide disputed points of school law. The ability of the State Superintendent to interpret law was established by the Legislature in 1881. This was an element that was made necessary by the early development of districts and disputes that arose at that point in time. Eventually, state superintendents recognized that they would rely on the counsel of the Attorney General and court decisions (see 1919 school laws report.). Additionally, the 1949 Legislature passed a major revision of the school laws. The State Superintendent at the time, Wayne O. Reed, reported that it “did much to simplify the administration of our school laws” and that many of the old laws were rewritten in order that opinions of the Attorney General and rulings of the State Superintendent would be incorporated in the revision. Reed reported that “these new laws” were an improvement over the prior statutes.³ The following year’s report issued on January 1, 1951 by then State Superintendent Otto Ruff suggested that the problems in interpreting school law were “simplified, solved, or eliminated” by the passage of the 1949 revisions. This power, however, remains in statute as an artifact of the transition to the modern department of education.

Additionally, Nebraska Revised Statute §79-306 describe the commissioner of education as the administrative head of the State Department of Education as follows:

The Commissioner of Education shall be the administrative head of the State Department of Education and as such shall have the authority to

- (1) delegate administrative and supervisory functions to the members of the staff of the department,
- (2) establish and maintain an appropriate system of personnel administration for the department,
- (3) prescribe such administrative rules and regulations as are necessary for the proper execution of duties and responsibilities placed upon him or her, and

³ The Annual Report of the Superintendent of Public Instruction (1949)

- (4) perform all duties prescribed by the Legislature in accordance with the policies adopted by the State Board of Education.

STATE BOARD MEMBERS: QUALIFICATIONS

The qualifications for serving as a state board member are enumerated in Article VII § 3 of the Nebraska Constitution and in Nebraska Revised Statute §79-313. According to the constitution, the State Board of Education is to be composed of eight members elected on a non-partisan ballot from eight districts as provided by the Legislature. The term of office is for four years and no limit on the number of terms is established. The only constitutional qualification is that members of the board can not be actively engaged in the education profession.

Nebraska statute provides for further limitations and §79-313 specifies as follows:

No person shall be eligible to membership on the State Board of Education

- (1) who is actively engaged in the teaching profession,
- (2) who is a holder of any state office, a member of a state board or commission unless the board or commission is limited to an advisory capacity, or a candidate for any state office, or board or commission unless the board or commission is limited to an advisory capacity, or
- (3) unless he or she is a citizen of the United States, a resident of the state for a period of at least six months, and a resident of the district from which he or she is elected for a period of at least six months immediately preceding his or her election.

STATE BOARD MEMBERS: DUTIES

Powers and duties of the state board of education are found primarily in statute; however there are two constitutional references of note. First, Article VII-2 states that the state department of education is “comprised” of a State Board of Education and a Commissioner. The reference would indicate that any legislation directed to the “Department of Education” is also directed to the State Board of Education and the Commissioner. Article VII-2 also states that the department “shall have general supervision and administration of the school system of the state and of such other activities as the Legislature may direct.”

The second constitutional reference relating to powers of the State Board of Education is found in Article VII-4. This states that the State Board of Education “shall appoint and fix the compensation of the Commissioner of Education...” The state board is also empowered to “appoint all employees of the State Department of Education on the recommendation of the Commissioner of Education.”

The state board is required by statute (§79-317) to meet at least four times annually to include once in June and once in December. The statutory language is permissive for additional meetings. In practice, the State Board meets monthly with the exception of July. All meetings of the State Board are subject to Nebraska’s Open Meetings Act. The Commissioner or his or her designee is required to be present at all meetings, except in meetings where the selection of the commissioner is the order of business, (See § 79-317(2)).

The following passage is Nebraska Revised Statute § 79-318, which describes the powers and duties of the state board.

The State Board of Education shall:

- (1) Appoint and fix the compensation of the Commissioner of Education;
- (2) Remove the commissioner from office at any time for conviction of any crime involving moral turpitude or felonious act, for inefficiency, or for willful and continuous disregard of his or her duties as commissioner or of the directives of the board;
- (3) Upon recommendation of the commissioner, appoint and fix the compensation of a deputy commissioner and all professional employees of the board;
- (4) Organize the State Department of Education into such divisions, branches, or sections as may be necessary or desirable to perform all its proper functions and to render maximum service to the board and to the state school system;
- (5) Provide, through the commissioner and his or her professional staff, enlightened professional leadership, guidance, and supervision of the state school system, including educational service units. In order that the commissioner and his or her staff may carry out their duties, the board shall, through the commissioner:
 - (a) Provide supervisory and consultation services to the schools of the state;
 - (b) issue materials helpful in the development, maintenance, and improvement of educational facilities and programs;
 - (c) establish rules and regulations which govern standards and procedures for the approval and legal operation of all schools in the state and for the accreditation of all schools requesting state accreditation. All public, private, denominational, or parochial schools shall either comply with the accreditation or approval requirements prescribed in this section and section 79-703 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in subsections (2) through (6) of section 79-1601. Standards and procedures for approval and accreditation shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds. Rules and regulations which govern standards and procedures for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2) through (6) of section 79-1601, not to meet state accreditation or approval requirements shall be as described in such section;
 - (d) institute a statewide system of testing to determine the degree of achievement and accomplishment of all the students within the state's school systems if it determines such testing would be advisable;
 - (e) prescribe a uniform system of records and accounting for keeping adequate educational and financial records, for gathering and reporting necessary educational data, and for evaluating educational progress;
 - (f) cause to be published laws, rules, and regulations governing the schools and the school lands and funds with explanatory notes for the guidance of those charged with the administration of the schools of the state;

- (g) approve teacher education programs conducted in Nebraska postsecondary educational institutions designed for the purpose of certificating teachers and administrators;
 - (h) approve teacher evaluation policies and procedures developed by school districts and educational service units; and
 - (i) approve general plans and adopt educational policies, standards, rules, and regulations for carrying out the board's responsibilities and those assigned to the State Department of Education by the Legislature;
- (6) Adopt and promulgate rules and regulations for the guidance, supervision, accreditation, and coordination of educational service units. Such rules and regulations for accreditation shall include, but not be limited to, (a) a requirement that programs and services offered to school districts by each educational service unit shall be evaluated on a regular basis, but not less than every seven years, to assure that educational service units remain responsive to school district needs and (b) guidelines for the use and management of funds generated from the property tax levy and from other sources of revenue as may be available to the educational service units, to assure that public funds are used to accomplish the purposes and goals assigned to the educational service units by section 79-1204. The State Board of Education shall establish procedures to encourage the coordination of activities among educational service units and to encourage effective and efficient educational service delivery on a statewide basis;
- (7) Submit a biennial report to the Governor and the Clerk of the Legislature covering the actions of the board, the operations of the State Department of Education, and the progress and needs of the schools and recommend such legislation as may be necessary to satisfy these needs;
- (8) Prepare and distribute reports designed to acquaint school district officers, teachers, and patrons of the schools with the conditions and needs of the schools;
- (9) Provide for consultation with professional educators and lay leaders for the purpose of securing advice deemed necessary in the formulation of policies and in the effectual discharge of its duties;
- (10) Make studies, investigations, and reports and assemble information as necessary for the formulation of policies, for making plans, for evaluating the state school program, and for making essential and adequate reports;
- (11) Submit to the Governor and the Legislature a budget necessary to finance the state school program under its jurisdiction, including the internal operation and maintenance of the State Department of Education;
- (12) Interpret its own policies, standards, rules, and regulations and, upon reasonable request, hear complaints and disputes arising therefrom;
- (13) With the advice of the Department of Motor Vehicles, adopt and promulgate rules and regulations containing reasonable standards, not inconsistent with existing statutes, governing: (a) The general design, equipment, color, operation, and maintenance of any vehicle with a manufacturer's rated seating capacity of eleven or more passengers used for the transportation of school children; and (b) the equipment, operation, and maintenance of any vehicle with a capacity of ten or less passengers used for the transportation of school students, when such vehicles are owned, operated, or owned and operated by any school district or privately owned or operated under contract with any

school district in this state. Similar rules and regulations shall be adopted and promulgated for operators of such vehicles as provided in section 79-607;

(14) Accept, on behalf of the Nebraska Center for the Education of Children who are Blind or Visually Impaired, formerly the Nebraska School for the Visually Handicapped, devises of real property or donations or bequests of other property, or both, if in its judgment any such devise, donation, or bequest is for the best interest of the center or the students receiving services from the center, or both, and irrigate or otherwise improve any such real estate when in the board's judgment it would be advisable to do so; and

(15) Upon acceptance of any devise, donation, or bequest as provided in this section, administer and carry out such devise, donation, or bequest in accordance with the terms and conditions thereof. If not prohibited by the terms and conditions of any such devise, donation, or bequest, the board may sell, convey, exchange, or lease property so devised, donated, or bequeathed upon such terms and conditions as it deems best and remit all money derived from any such sale or lease to the State Treasurer for credit to the State Department of Education Trust Fund.

Each member of the Legislature shall receive a copy of the report required by subdivision (7) of this section by making a request for it to the commissioner.

None of the duties prescribed in this section shall prevent the board from exercising such other duties as in its judgment may be necessary for the proper and legal exercise of its obligations.

The State Board of Education also has several other powers statutorily granted in §79-319. These additional powers are generally in addition to those found in §79-318. The following passage is Nebraska Revised Statutes §79-319:

The State Board of Education has the authority to

(1) provide for the education of and approve special educational facilities and programs provided in the public schools for children with disabilities,

(2) act as the state's authority for the approval of all types of veterans educational programs which are financially supported in whole or in part by the federal government,

(3) supervise and administer any educational or training program established within the state by the federal government, except postsecondary education in approved colleges,

(4) coordinate educational activities in the state that pertain to elementary and secondary education and such other educational programs as are placed by statute under the jurisdiction of the board,

(5) receive and distribute according to law any money, commodities, goods, or services made available to the board from the state or federal government or from any other source and distribute money in accordance with the terms of any grant received, including the distribution of money from grants by the federal government to schools, preschools, day care centers, day care homes, nonprofit agencies, and political subdivisions of the state or institutions of learning not owned or exclusively controlled by the state or a political subdivision thereof, so long as no public funds of the state, any political subdivision, or any public corporation are added to such federal grants,

(6) publish, from time to time, directories of schools and educators, pamphlets, curriculum guides, rules and regulations, handbooks on school constitution and other

matters of interest to educators, and similar publications. Such publications may be distributed without charge to schools and school officials within this state or may be sold at a price not less than the actual cost of printing. The proceeds of such sale shall be remitted to the State Treasurer for credit to the State Department of Education Cash Fund which may be used by the State Department of Education for the purpose of printing and distributing further such publications on a nonprofit basis. The board shall furnish eight copies of such publications to the Nebraska Publications Clearinghouse, and

(7) when necessary for the proper administration of the functions of the department and with the approval of the Governor and the Department of Administrative Services, rent or lease space outside the State Capitol. (Neb. Rev. Statutes §79-319, 2007)

LINE OF AUTHORITY BETWEEN THE STATE BOARD AND COMMISSIONER

The relationship and line of authority between the state board and the commissioner is similar to that between school district boards of education and superintendents. There are cases in Nebraska schools where the superintendent serves as “secretary of the board” and the statutory descriptions of powers and duties are also similar to the board as the policy-making body and the commissioner as the administrator. The role of “executive officer” for the commissioner would indicate a similar role as a superintendent in a school district where the day-to-day administration of the agency and the “general supervision and administration” of the school districts would rest with the commissioner and the department of education.

It is also clear that the commissioner is appointed and hired by the board in both constitutional and statutory references. Statute also demonstrates that it is the responsibility of the commissioner to act under the authority of the state board. It is also clear in statute that it is the responsibility of the commissioner to carry out requirements of law and board policy, (See §79-301).

In addition to the “line of authority” issue, the interim study resolution addresses three additional areas that are reasonably considered in this same section. They are as follows:

COMMISSIONER AS “SECRETARY OF THE BOARD”

This duty of acting as secretary of the board is established for the Commissioner in Nebraska Revised Statute §79-315. The duty is not specifically defined in statute. In practice, the Department of Education provides staff for the typical “secretary of the board” responsibilities, including minutes, notes, and recording of motions.

STATE BOARD ABILITY TO MEET WITHOUT THE COMMISSIONER

The state board is required to have the commissioner or his or her designee at all meetings, except in the case of selecting a commissioner. This requirement is established in statute (See § 79-317). Section 79-301 also states that the board “shall deliberate and take action with the professional advice and counsel of the Commissioner of Education.” Article VII section 4 of the Nebraska Constitution also describes the commissioner as the “executive officer” of the state board. The commissioner does not have any vote or veto authority on matters considered by the state board.

ABILITY OF THE COMMISSIONER TO ACT CONTRARY TO STATE BOARD POLICY

This point raised in the interim study resolution best fits into a question of line of authority. Is the Commissioner able to act independent of the State Board and can this independent act be contrary to a board policy? Section 79-301 of state statute clearly states:

The commissioner shall act under the authority of the State Board of Education. The commissioner shall have the responsibility for carrying out the requirements of law and of board policies, standards, rules, and regulations and for providing the educational leadership and services deemed necessary by the board for the proper conduct of the state school program. (Neb. Rev. Statutes § 79-301(3))

In the role of executive officer of the board, the commissioner would normally be speaking on behalf of the board and the commissioner would be required to carry out board policy.

However, an underlying question dealing with lines of authority is the question of whether or not the commissioner may act independently of the board. For instance, can the commissioner represent a viewpoint not yet decided by the board or a viewpoint contrary to a position by the board.? No established level of independence is granted to a commissioner by statute or the constitution. It would seem that any level of independence is determined in the relationship between the board and the commissioner. Contradictory viewpoints are likely between board members and the commissioner and the resolution to those ultimately rest with the state board. Thus again, the board makes policy and has the recourse to remove the commissioner when or if it chooses either through failure to renew a contract or through the power to remove the commissioner for "...willful and continuous disregard of his or her duties as commissioner or of the directives of the board" under Neb. Rev. Statute §79-318. The extent to or circumstances surrounding such recourse is a matter presumably left to the state board.

OTHER POWERS & DUTIES

STATUTORY

Several powers and duties are specified throughout statute. Statute further defines the constitutional role of the Department of Education, State Board, and Commissioner in the "general supervision and administration" of the state school system.

AS A MATTER OF PRACTICE

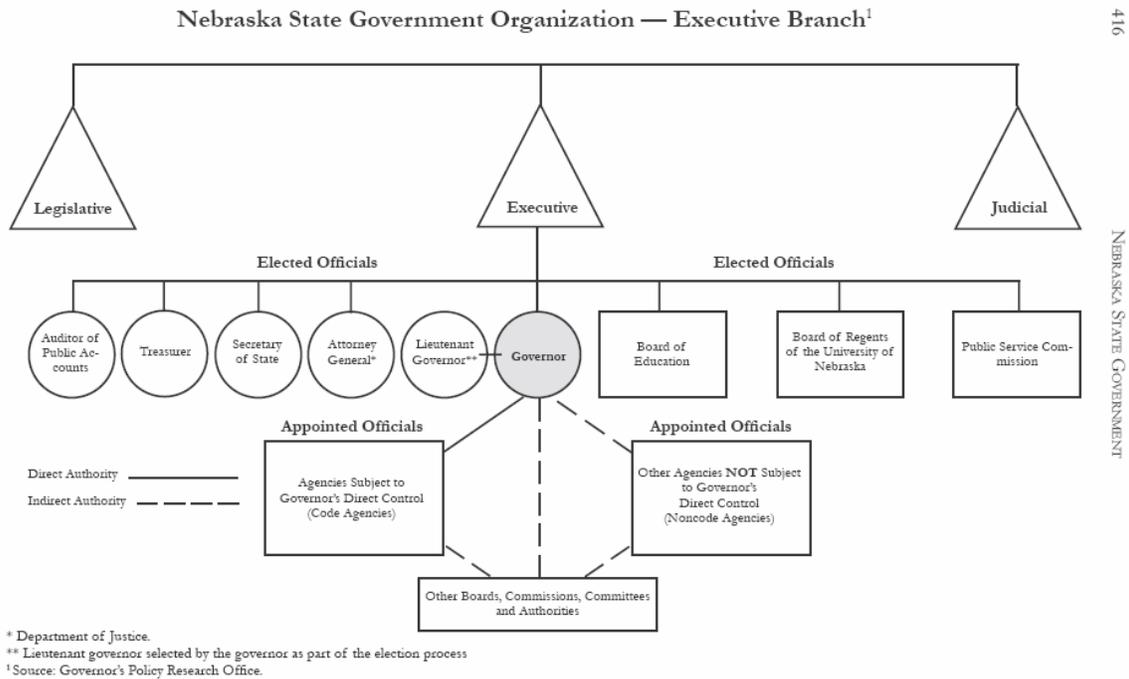
Determining other powers and duties as a matter of practice will require input from the Department and others. Although many powers and duties are also incorporated in the constitution, statute and administrative code, there are many instances of powers and duties that are left to the interpretation of the Department of Education.

ROLE AND RELATIONSHIP AMONG BRANCHES OF GOVERNMENT

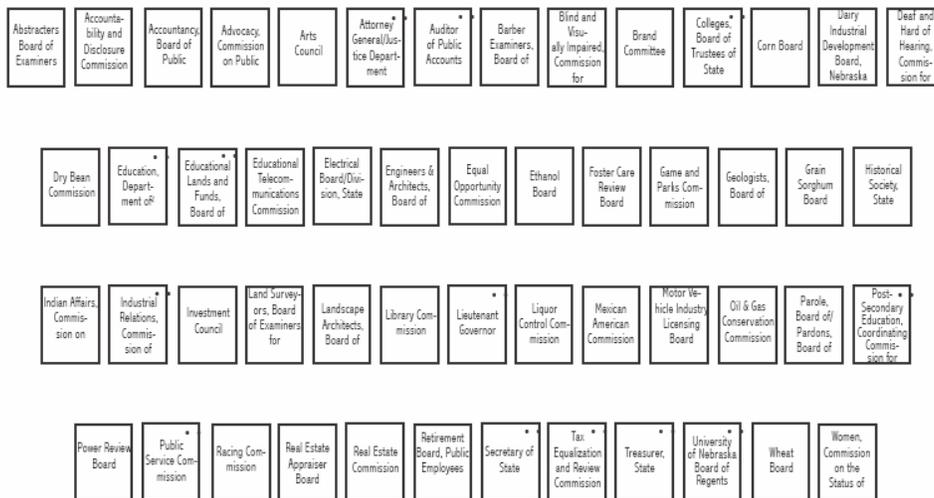
There are several considerations for the role and relationship between the branches of government. Primarily this question to be considered is one of the relationship among Nebraska’s governor, legislature, and state department of education. Additionally, it is worthy of considering the role of other branches of government as well. These would include the Attorney General, the Secretary of State, the courts, and the federal government.

The Nebraska Department of Education is a non-code agency of the Executive Branch. The State Board of Education serves as the constitutionally elected body overseeing the Department of Education. The Department is not directed by the Governor or any other Executive Branch agency. This is also true of the Board of Regents and the Public Service Commission as the chart below demonstrates. However, the relationship of agencies of the executive branch are all subject to state statute and reliant on state appropriation in the Legislature’s biennial budget process. This creates an interaction and reliance on the legislative and executive branches of government that necessitate policy and budgetary conversations.

The following charts are from the 2006-07 Nebraska Blue Book, available online at <http://www.unicam.state.ne.us/web/public/bluebook>. The charts provide a visual of the organization of the executive branch for the State of Nebraska and a list of the non-code agencies in state government.



Nebraska State Government Organization — Executive Branch*
Executive Agencies¹ Not Subject to Governor's Direct Control (Noncode Agencies)



NEBRASKA STATE GOVERNMENT

609

* Source: Governor's Policy Research Office.

¹ Including elected officials' offices (in bold).

² Includes State Board of Education and commissioner of education (appointed by board).

Starred items are offices and agencies established in the Nebraska Constitution.

State agencies are granted a scope of certain powers and duties and then required to adopt rules and regulations within the statutory requirements. The Nebraska Department of Education adopts rules and regulations under Title 92 of the Nebraska Administrative Code. Title 92 consists primarily of chapters (rules) dealing with the operation of schools. For instance Rule 10 addresses school accreditation. Each subject dealt with in the rule is cross referenced with the appropriate statute which grants authority for the Department to create the regulation. The Department is essentially managed under Title 93, which establishes the NDE personnel rules. The statutory authority cited for most of Title 93 is Neb. Rev. Statute §79-306, which is the description of the Commissioner of Education as the administrative head of the NDE.

The following is from the Nebraska Secretary of State website: http://www.sos.ne.gov/rules-and-regs/reg_process.html. This provides a general glimpse into the regulation process.

OVERVIEW OF REGULATION PROCESS

What are regulations?

- Just as the Legislature passes laws under the authority granted to them by the Constitution, state agencies adopt or promulgate regulations under the authority granted to them by the state statutes passed by the Nebraska Legislature. Regulations are adopted in order to clarify and define processes and requirements outlined in state law. For example, state law may provides that it is illegal to drive with a blood alcohol level over .08%, regulations define how testing for blood alcohol content is conducted. Properly adopted regulations have the force of law. Commonly referred to as "rules", "regulations", or "rules and regulations", the

official name for the compiled rules and regulations of the state is the Nebraska Administrative Code

How are regulations promulgated?

- A regulation is created, amended, or repealed through the hearing and adoption process. This can take anywhere from weeks to months from start to finish. The purpose of the hearing and adoption process is to ensure that the public has an opportunity to participate in the rulemaking process and that the regulation is properly authorized by law.
- Unless there are special circumstances, each proposed regulation goes through a mandatory adoption process. These adoption process is as follows:
 - Rules Drafting Period: While not specifically required by law, the rules drafting period is an indefinite amount of time used by the agency to draft the proposed regulations and solicit input from interested parties as appropriate. Interested parties may include the general public, industry associations, or anyone persons or groups affected by the regulation. Because it is difficult to significantly change a regulation once it has been set for hearing, the drafting period is an important phase in the development of regulations.
 - 30 Day Publication Notice*: Notice of the rulemaking hearing must be published at least 30 days prior to the hearing (Neb. Rev. Stat. §84-907) to inform the public of the proposed change. Contents of the notice include date, time and place of the hearing as well as a short explanation of the purpose of the proposed regulations. Also included in the notice are the political subdivisions and persons being regulated and a fiscal impact statement of the monetary impact on state agencies, though this statement is not required to contain specific dollar amounts. Notices are generally published in a newspaper of general circulation and are also available on the rules tracking website: <http://www.sos.state.ne.us/business/regtrack/> as well as in the office of the Secretary of State. Text of the proposed changes is available on the website and in the Secretary of State's Office.
 - Public Hearing: The Public Hearing is an opportunity for the public to comment on proposed regulations. Time and place of the hearing are showing in the hearing notice. Agencies may now take online comments as well if they choose to enable the online comment function of the new rules tracking system.
 - Submission for Review: After the hearing, the regulations and the accompanying material must be submitted to the Attorney General and the Governor. The Attorney General reviews the regulation for compliance with statutory and constitutional authority. The regulation then goes to the Governor for policy review and final approval.
 - Adoption of Regulations: Upon completion of these steps, the regulations are then forwarded to the Secretary of State and become law five days following receipt.
*There is a waiver provision for the 30 notice requirement for hearings in emergency situations.

Although the process has been well established since the development of the Administrative Procedure Act in the 1940s, there have been instances of disagreement

about the adoption of rules and regulations. The Legislature adopted LB 373 in 2005, which allows a legislator to file a grievance of sorts regarding a rule or regulation adopted by an agency. However, if a rule is revised and receives the approval of the Attorney General and the Governor, the legislator's only recourse is to propose to change the law.

There are a series of interactions between branches of government in the course of establishing and operationalizing law. This is no different in education policy. Nebraska history demonstrates that this is an ongoing process that is necessary to propose and consider changes over time. The relationships among branches of government have changed in many ways. Among the more dramatic changes occurred in the creation of the modern Department of Education in the 1950s. Since that time, statute has evolved to define the scope of policy authority granted to the Department of Education.

In somewhat of a Nebraska landmark decision, *School District No. 8 of Sherman county v. State Board of Education* in 1964, the Nebraska Supreme Court made clear the Legislature may grant the State Board of Education powers and that the constitutional powers are dependent upon implementing legislative action. The Court described how the relationship between an agency and the legislature relies on both the establishment of the authority through statute and the adoption of rules and regulations by the agency. The Court described this delegation of power and authority in District 8 case as follows:

The difference between a delegation of legislative power and the delegation of authority to an administrative agency to carry out the expressed intent of the Legislature and the details involved has long been a difficult and important question. Increased complexity of our social order, and the multitude of details that necessarily follow, has led to a relaxation of the specific standards in the delegating statute in favor of more general ones where a specialized state agency is concerned. It is almost impossible for a legislature to prescribe all the rules and regulations necessary for a specialized agency to accomplish the legislative purpose. The delegation of authority to a specialized department under more generalized standards has been the natural trend as the need for regulation has become more evident and complex. (*School Dist. No. 8 of Sherman County v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458, 1964)

The court, however, does not seem to limit the level of specificity in the delegation of legislative powers, except to suggest that there is a practical need to allow agencies to deal with the complexity of issues in the administration of policies.

APPENDIX A:

Constitutional References to State Department of Education, State Board and Commissioner of Education

Article VII-2

State Department of Education; general supervision of school system.

The State Department of Education shall be comprised of a State Board of Education and a Commissioner of Education. The State Department of Education shall have general supervision and administration of the school system of the state and of such other activities as the Legislature may direct.

Source:

Neb. Const. art. VIII, sec. 2 (1875);

Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 2;

Amended 1972, Laws 1972, LB 1023, sec. 1.

Annotations:

Grant of administrative and executive power to the Department of Education is authorized. School Dist. No. 8 of Sherman County v. State Board of Education, 176 Neb. 722, 127 N.W.2d 458 (1964).

Article VII-3

State Board of Education; members; election; manner of election; term of office.

The State Board of Education shall be composed of eight members, who shall be elected from eight districts of substantially equal population as provided by the Legislature. Their term of office shall be for four years each. Their duties and powers shall be prescribed by the Legislature, and they shall receive no compensation, but shall be reimbursed their actual expense incurred in the performance of their duties. The members of the State Board of Education shall not be actively engaged in the educational profession and they shall be elected on a nonpartisan ballot.

Source:

Neb. Const. art. VIII, sec. 3 (1875);

Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 3;

Amended 1972, Laws 1972, LB 1023, sec. 1.

Annotations:

Powers and duties of State Board of Education are prescribed by law. School Dist. No. 8 of Sherman County v. State Board of Education, 176 Neb. 722, 127 N.W.2d 458 (1964).

Article VII-4

State Board of Education; Commissioner of Education; appointment; powers and duties.

The State Board of Education shall appoint and fix the compensation of the Commissioner of Education, who shall be the executive officer of the State Board of Education and the administrative head of the State Department of Education, and who shall have such powers and duties as the Legislature may direct. The board shall appoint all employees of the State Department of Education on the recommendation of the Commissioner of Education.

Source:

Neb. Const. art. VIII, sec. 4 (1875);

Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 4;

Amended 1966, Laws 1965, c. 294, sec. 1, p. 836;

Amended 1972, Laws 1972, LB 1023, sec. 1.

Article VII-13

State colleges; government; board; name; selection; duties; compensation.

The general government of the state colleges as now existing, and such other state colleges as may be established by law, shall be vested, under the direction of the Legislature, in a board of seven members to be styled as designated by the Legislature, six of whom shall be appointed by the Governor, with the advice and consent of the Legislature, two each for a term of two, four, and six years, and two each biennium thereafter for a term of six years, and the Commissioner of Education shall be a member ex officio. The duties and powers of the board shall be prescribed by law, and the members thereof shall receive no compensation for the performance of their duties, but may be reimbursed their actual expenses incurred therein.

Source:

Neb. Const. art. VIII, sec. 13 (1920);

Adopted 1920, Constitutional Convention, 1919-1920, No. 25;

Transferred by Constitutional Convention, 1919-1920, art. VII, sec. 13;

Amended 1952, Laws 1951, c. 164, sec. 2(4), p. 646;

Amended 1968, Laws 1967, c. 315, sec. 1, p. 845.

Annotations:

Board of Education of State Normal Schools was established in 1920. State ex rel. Johnson v. Hagemeister, 161 Neb. 475, 73 N.W.2d 625 (1955).

Teacher, head of department in state normal school, dismissed by president without action by board, is entitled to test, by quo warranto, the right of teacher employed to take his place. Eason v. Majors, 111 Neb. 288, 196 N.W. 133 (1923).

Upon showing that college administrative body acted from honest conviction upon belief facts showed it was for best interests of the school, and there was no showing that act was arbitrary or generated by ill will, fraud, coercion, or other such motives, court will not interfere. Levitt v. Board of Trustees of Nebraska State Colleges, 376 F.Supp. 945 (D. Neb. 1974).

APPENDIX B:

Statutory Powers and Duties of the State Board of Education and the Commissioner of Education (79-301 through 79-321 and 79-738 through 79-744)

Section 79-301

State Department of Education; State Board of Education; Commissioner of Education; powers; duties; vacancy, absence, or incapacity; deputy commissioner; duties.

(1) The State Department of Education provided for in Article VII, section 2, of the Constitution of Nebraska shall consist of a State Board of Education and a Commissioner of Education. The State Department of Education shall have general supervision and administration of the school system of the state and of such other activities as the Legislature may direct.

(2) The State Board of Education, acting as a unit, shall be the policy-forming, planning, and evaluative body for the state school program. Except in the appointment of a Commissioner of Education, the board shall deliberate and take action with the professional advice and counsel of the Commissioner of Education.

(3) The Commissioner of Education shall be the executive officer of the State Board of Education and the administrative head of the professional, technical, and clerical staff of the State Department of Education. The commissioner shall act under the authority of the State Board of Education. The commissioner shall have the responsibility for carrying out the requirements of law and of board policies, standards, rules, and regulations and for providing the educational leadership and services deemed necessary by the board for the proper conduct of the state school program. In the event of vacancy in office or the absence or incapacity of the Commissioner of Education, the deputy commissioner shall carry out all the duties imposed by law upon the commissioner.

Source:

Laws 1953, c. 320, § 1, p. 1053

Laws 1971, LB 220, § 1

R.S.1943, (1994), § 79-321

Laws 1996, LB 900, § 129

Laws 1997, LB 347, § 6

Cross References:

Surplus property of federal government, assist public schools in obtaining, see sections 81-910 to 81-912.

Section 79-302

Regulations; reports; duty of department to prescribe.

The State Department of Education shall prescribe forms for making all reports and regulations for all proceedings under the general school laws of the state. The department may establish procedures for submission of forms on electronic media or via telecommunications systems. The department may require

the use of a personally identifiable number, which it will assign, on electronic data submissions in lieu of requiring authorized signatures on paper forms.

Source:

Laws 1881, c. 78, subdivision VIII, § 5, p. 363

R.S.1913, § 6902

C.S.1922, § 6478

C.S.1929, § 79-1605

R.S.1943, § 79-1608

Laws 1949, c. 256, § 28, p. 701

Laws 1965, c. 513, § 1, p. 1633

Laws 1993, LB 348, § 10

R.S.1943, (1994), § 79-307

Laws 1996, LB 900, § 130

Annotations:

Under former law, authority to make rules was an unconstitutional delegation of legislative authority. School Dist. No. 39 of Washington County v. Decker, 159 Neb. 693, 68 N.W.2d 354 (1955).

Section 79-303

State Department of Education Revolving Fund; created; use; investment.

(1) The State Department of Education may provide for a system of charges for services rendered by the administrative support programs of the department to all other programs within the department. Such charges received for administrative support services shall be credited to the State Department of Education Revolving Fund, which fund is hereby created. Expenditures shall be made from such fund to finance the operation of the administrative support programs of the department in accordance with appropriations made by the Legislature.

(2) The Director of Administrative Services, upon receipt of proper vouchers approved by the Commissioner of Education, shall issue warrants out of the State Department of Education Revolving Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source:

Laws 1978, LB 962, § 1

Laws 1995, LB 7, § 88

R.S.Supp.,1995, § 79-340

Laws 1996, LB 900, § 131

Cross References:

Nebraska Capital Expansion Act, see section 72-1269.

Nebraska State Funds Investment Act, see section 72-1260.

Section 79-304

Commissioner of Education; qualifications.

The Commissioner of Education shall (1) be a person of superior educational attainments, (2) have had many years of experience, (3) have demonstrated personal and professional leadership in the administration of public education, and (4) be eligible to qualify for the highest grade of school administrator certificate currently issued in the state.

Source:

Laws 1953, c. 320, § 11, p. 1059

R.S.1943, (1994), § 79-331

Laws 1996, LB 900, § 132

Section 79-305

Commissioner of Education; office; powers; duties.

The Commissioner of Education as the executive officer of the State Board of Education shall: (1) Have an office in the city of Lincoln in which shall be housed the records of the State Board of Education and the State Department of Education, which records shall be subject at all times to examination by the Governor, the Auditor of Public Accounts, and committees of the Legislature; (2) keep the board currently informed and advised on the operation and status of all aspects of the educational program of the state under its jurisdiction; (3) prepare a budget for financing the activities of the board and the department, including the internal operation and maintenance of the department, and upon approval by the board administer the same in accordance with appropriations by the Legislature; (4) voucher the expenses of the department according to the rules and regulations prescribed by the board; (5) be responsible for promoting the efficiency, welfare, and improvement in the school system in the state and for recommending to the board such policies, standards, rules, and regulations as may be necessary to attain these purposes; (6) promote educational improvement by (a) outlining and carrying out plans and conducting essential activities for the preparation of curriculum and other materials, (b) providing necessary supervisory and consultative services, (c) holding conferences of professional educators and other civic leaders, (d) conducting research, experimentation, and evaluation of school programs and activities, and (e) in other ways assisting in the development of effective education in the state; (7) decide disputed points of school law, which decisions shall have the force of law until changed by the courts; (8) issue teachers' certificates according to the provisions of law and the rules and regulations prescribed by the board; and (9) attend or, in case of necessity, designate a representative to attend all meetings of the board except when the order of business of the board is the selection of a Commissioner of Education. None of the duties prescribed in this section or in section 79-306 prevent the commissioner from exercising such other duties as in his or her judgment and with the approval of the board are necessary to the proper and legal exercise of his or her obligations.

Source:

Laws 1953, c. 320, § 12, p. 1059

Laws 1979, LB 289, § 1

R.S.1943, (1994), § 79-332

Laws 1996, LB 900, § 133

Cross References:

Constitutional provisions:

Appointment, see Article VII, section 4, Constitution of Nebraska.

Board of Trustees of the Nebraska State Colleges, ex officio member, see Article VII, section 13, Constitution of Nebraska.

State Board of Vocational Education, executive officer, see section 79-740.

Section 79-306

Commissioner of Education; State Department of Education; administrative head.

The Commissioner of Education shall be the administrative head of the State Department of Education and as such shall have the authority to (1) delegate administrative and supervisory functions to the members of the staff of the department, (2) establish and maintain an appropriate system of personnel administration for the department, (3) prescribe such administrative rules and regulations as are necessary for the proper execution of duties and responsibilities placed upon him or her, and (4) perform all duties prescribed by the Legislature in accordance with the policies adopted by the State Board of Education.

Source:

Laws 1953, c. 320, § 13, p. 1060

R.S.1943, (1994), § 79-333

Laws 1996, LB 900, § 134

Section 79-307

School districts; numbering.

The Commissioner of Education shall assign a number to each public school district within this state.

Source:

Laws 1971, LB 528, § 1

R.S.1943, (1987), § 79-312.01

Laws 1988, LB 1142, § 3

R.S.1943, (1994), § 79-301

Laws 1996, LB 900, § 135

Section 79-308

Teacher's institutes and conferences; organization; supervision.

The Commissioner of Education shall organize institutes and conferences at such times and places as he or she deems practicable. He or she shall, as far as practicable, attend such institutes and conferences, provide proper instructors for the same, and in other ways seek to improve the efficiency of teachers and advance the cause of education in the state.

Source:

Laws 1881, c. 78, subdivision VIII, § 2, p. 363

R.S.1913, § 6899

C.S.1922, § 6475

C.S.1929, § 79-1602

R.S.1943, § 79-1605

Laws 1949, c. 256, § 25, p. 700

R.S.1943, (1994), § 79-304

Laws 1996, LB 900, § 136

Section 79-309

Public schools; duty to visit and supervise.

The Commissioner of Education shall visit or cause to be visited such schools as he or she may have it in his or her power to do and witness and advise with teachers and school officers upon the manner in which they are conducted.

Source:

Laws 1881, c. 78, subdivision VIII, § 3, p. 363

R.S.1913, § 6900

C.S.1922, § 6476

C.S.1929, § 79-1603

R.S.1943, § 79-1606

Laws 1949, c. 256, § 26, p. 701

R.S.1943, (1994), § 79-305

Laws 1996, LB 900, § 137

Section 79-310

State Board of Education; members; election.

The State Board of Education shall be composed of eight members who shall be elected as provided in section 32-511.

Source:

Laws 1953, c. 320, § 2, p. 1054

Laws 1967, c. 527, § 1, p. 1750

Laws 1991, LB 619, § 1

Laws 1994, LB 76, § 589

R.S.1943, (1994), § 79-322

Laws 1996, LB 900, § 138

Cross References:

Constitutional provisions:

Creation, Article VII, section 3, Constitution of Nebraska.

Membership, requirements, Article VII, section 3, Constitution of Nebraska.

Filing fees, see section 32-608.

Nomination, nonpolitical, see section 32-609.

Section 79-311

State Board of Education; districts enumerated.

For the purpose of section 79-310, the state is divided into eight districts. The limits and designations of the eight districts shall be as follows:

District No. 1. That part of Lancaster County not included in State Board of Education district 5;

District No. 2. The counties of Washington and Cass, that part of Saunders County not included in State Board of Education district 3, that part of Sarpy County not included in State Board of Education district 4 and State Board of Education district 8, and that part of Douglas County not included in State Board of Education district 4 and State Board of Education district 8;

District No. 3. The counties of Cedar, Dixon, Dakota, Wayne, Thurston, Madison, Stanton, Cuming, Burt, Platte, Colfax, Dodge, Polk, and Butler and that part of Saunders County beginning at the intersection of the Saunders-Lancaster County line and U.S. Highway 77, north on U.S. Highway 77 to County Road 18, north on County Road 18 to a north-south line extending north from County Road 18, north along such line to County Road L, east on County Road L to the creek, northwest and north along the creek to County Road M, east on County Road M to County Road 18, north on County Road 18 to County Road X, east on County Road X to County Road 18, north on County Road 18 to Two Mile Road, east on Two Mile Road to County Road 17, north on County Road 17 to County Road Z, east on County Road Z to County Road 17, northwest and north on County Road 17 to Cedar Lakes Road, east on Cedar Lakes Road to the Saunders-Dodge County line, west along the Saunders-Dodge County line to the Saunders-Butler County

line, south along the Saunders-Butler County line to the Saunders-Lancaster County line, and east along the Saunders-Lancaster County line to the point of beginning;

District No. 4. That part of Douglas County beginning at the intersection of the Douglas-Sarpy County line and South 60th Street, northeast on South 60th Street to the Burlington Northern Santa Fe Railroad right-of-way, east along the Burlington Northern Santa Fe Railroad right-of-way to the intersection of an east-west line extending west from Y Street, east along such line to Y Street, east on Y Street to South 52nd Street, north on South 52nd Street to Orchard Avenue, east on Orchard Avenue to South 51st Street, north on South 51st Street to L Street, east on L Street to South 50th Street, north on South 50th Street to Bancroft Street, east on Bancroft Street to South 48th Street, north on South 48th Street to Pacific Street, west on Pacific Street to South 50th Street, north on South 50th Street to North 50th Street, north on North 50th Street to Chicago Street, west on Chicago Street to North 52nd Street, north on North 52nd Street to Western Avenue, west on Western Avenue to North 60th Street, north on North 60th Street to Blondo Street, west on Blondo Street to North 61st Street, north on North 61st Street to Miami Street, east on Miami Street to North 60th Avenue, north on North 60th Avenue to Maple Street, west on Maple Street to North 61st Street, north on North 61st Street to Pratt Street, east on Pratt Street to North 60th Street, north on North 60th Street to Sprague Street, west on Sprague Street to North 63rd Street, north on North 63rd Street to Ames Avenue, east on Ames Avenue to North 62nd Street, north on North 62nd Street to Park Lane Drive, east on Park Lane Drive to North 60th Street, north on North 60th Street to Sorenson Parkway, west on Sorenson Parkway to 66th Street, north on 66th Street to a north-south line extending north from 66th Street, north along such line to the northernmost boundary of Precinct 1-13, follow such boundary west to North 72nd Street, north on North 72nd Street to State Street, east on State Street to North 60th Street, south on North 60th Street to King Street, east on King Street to North 54th Avenue, southeast on North 54th Avenue to Sheffield Street, east on Sheffield Street to Mormon Bridge Road, northeast on Mormon Bridge Road to Young Street, east on Young Street to North 42nd Street, northeast on North 42nd Street to State Street, northeast on State Street to North 36th Street, south on North 36th Street to Sheffield Street, east on Sheffield Street to North 30th Street, south on North 30th Street to Read Street, east on Read Street to North 25th Street, south on North 25th Street to Vane Street, east on Vane Street to North 24th Street, north on North 24th Street to Read Street, east on Read Street and continuing east along an east-west line extending east from Read Street to the Nebraska-Iowa state line, south along the Nebraska-Iowa state line to the Douglas-Sarpy County line, and west along the Douglas-Sarpy County line to the point of beginning, and that part of Sarpy County beginning at the intersection of the Douglas-Sarpy County line and South 108th Street, south on South 108th Street to Giles Road, west on Giles Road to South 114th Street, south on South 114th Street to Capehart Road, east on Capehart Road to South 72nd Street, north on South 72nd Street to State Highway 370, east on State Highway 370 to the easternmost boundary of Papillion 2-3 Precinct, north along such boundary to Cedardale Road, east on Cedardale Road to 66th Street, north on 66th Street to Cornhusker Road, east on Cornhusker Road to South 36th Street, north on South 36th Street to the southern boundary of Gillmore 1 Precinct, follow such boundary east and north to Childs Road, east on Childs Road to Cedar Island Road, north on Cedar Island Road to Chandler Road West, east on Chandler Road West to Chandler Road East, east on Chandler Road East to Bellevue Boulevard, northwest on Bellevue Boulevard to Gifford Drive, northeast on Gifford Drive to the Douglas-Sarpy County line, and west along the Douglas-Sarpy County line to the point of beginning;

District No. 5. The counties of York, Seward, Adams, Clay, Fillmore, Saline, Webster, Nuckolls, Thayer, Jefferson, Gage, Otoe, Johnson, Nemaha, Pawnee, and Richardson and that part of Lancaster County beginning at the intersection of the Lancaster-Saline County line and West Stagecoach Road, east on West Stagecoach Road to the western boundary of Centerville Precinct, north along such boundary to West Saltillo Road, east on West Saltillo Road to Southwest 56th Street, north on Southwest 56th Street to West Van Dorn Street, east on West Van Dorn Street to the eastern boundary of Garfield 2 Precinct, follow such boundary north to West Vine Street, east on West Vine Street to Northwest 27th Street, south on Northwest 27th Street to the southern boundary of 1A-1 Precinct, follow such boundary east to Sun Valley Boulevard, northeast on Sun Valley Boulevard to Interstate Highway 180, south on Interstate Highway 180 to Salt Creek, northeast along Salt Creek to the southern boundary of 1D-3 Precinct, follow such boundary east to North 27th Street, north on North 27th Street to the Lancaster-Saunders County line, west along the Lancaster-Saunders County line to the Lancaster-Seward County line, south and west along the Lancaster-

Seward County line to the Lancaster-Saline County line, and south along the Lancaster-Saline County line to the point of beginning;

District No. 6. The counties of Hamilton, Merrick, Nance, Boone, Antelope, Pierce, Knox, Boyd, Holt, Wheeler, Greeley, Howard, Hall, Kearney, Franklin, Harlan, Phelps, Buffalo, Sherman, Valley, Garfield, and Custer;

District No. 7. The counties of Furnas, Red Willow, Hitchcock, Dundy, Chase, Hayes, Frontier, Gosper, Dawson, Lincoln, Perkins, Keith, Deuel, Cheyenne, Kimball, Banner, Scotts Bluff, Morrill, Garden, Arthur, McPherson, Logan, Loup, Rock, Keya Paha, Brown, Blaine, Thomas, Hooker, Grant, Cherry, Sheridan, Dawes, Box Butte, and Sioux; and

District No. 8. That part of Sarpy County beginning at the intersection of the Douglas-Sarpy County line and South 108th Street, south on South 108th Street to Giles Road, west on Giles Road to South 114th Street, south on South 114th Street to the southern boundary of Papillion Second 2 Voting District, west along such boundary to the southern boundary of Richland 1 Precinct, west along such boundary to the southern boundary of Richland 8 Precinct, west along such boundary to Interstate Highway 80, southwest on Interstate Highway 80 to Capehart Road, northwest on Capehart Road to South 192nd Street, north on South 192nd Street to Cornhusker Road, west on Cornhusker Road to South 222nd Street, north on South 222nd Street to Centennial Road, west on Centennial Road to South 225th Street, north on South 225th Street to the Douglas-Sarpy County line, and east along the Douglas-Sarpy County line to the point of beginning, and that part of Douglas County beginning at the intersection of the Douglas-Sarpy County line and South 60th Street, northeast on South 60th Street to the Burlington Northern Santa Fe Railroad right-of-way, east along the Burlington Northern Santa Fe Railroad right-of-way to the intersection of an east-west line extending west from Y Street, east along such line to Y Street, east on Y Street to South 52nd Street, north on South 52nd Street to Orchard Avenue, east on Orchard Avenue to South 51st Street, north on South 51st Street to L Street, east on L Street to South 50th Street, north on South 50th Street to Bancroft Street, east on Bancroft Street to South 48th Street, north on South 48th Street to Pacific Street, west on Pacific Street to South 50th Street, north on South 50th Street to North 50th Street, north on North 50th Street to Chicago Street, west on Chicago Street to North 52nd Street, north on North 52nd Street to Western Avenue, west on Western Avenue to North 60th Street, north on North 60th Street to Blondo Street, west on Blondo Street to North 61st Street, north on North 61st Street to Miami Street, east on Miami Street to North 60th Avenue, north on North 60th Avenue to Maple Street, west on Maple Street to North 61st Street, north on North 61st Street to Pratt Street, east on Pratt Street to North 60th Street, north on North 60th Street to Sprague Street, west on Sprague Street to North 63rd Street, north on North 63rd Street to Ames Avenue, east on Ames Avenue to North 62nd Street, north on North 62nd Street to Park Lane Drive, east on Park Lane Drive to North 60th Street, north on North 60th Street to Sorenson Parkway, west on Sorenson Parkway to 66th Street, north on 66th Street to a north-south line extending north from 66th Street, north along such line to the northernmost boundary of Precinct 1-13, follow such boundary west to North 72nd Street, north on North 72nd Street to State Street, east on State Street to North 60th Street, south on North 60th Street to King Street, east on King Street to North 54th Avenue, southeast on North 54th Avenue to Sheffield Street, east on Sheffield Street to Mormon Bridge Road, northeast on Mormon Bridge Road to Young Street, east on Young Street to North 42nd Street, northeast on North 42nd Street to State Street, northeast on State Street to North 36th Street, south on North 36th Street to Sheffield Street, east on Sheffield Street to North 30th Street, south on North 30th Street to Read Street, east on Read Street to North 25th Street, south on North 25th Street to Vane Street, east on Vane Street to North 24th Street, north on North 24th Street to Read Street, east on Read Street and continuing east along an east-west line extending east from Read Street to the Nebraska-Iowa state line, northwest along the Nebraska-Iowa state line to Interstate Highway 680, west on Interstate Highway 680 to McKinley Street, northwest on McKinley Street to State Highway 36, west on State Highway 36 to North 108th Street, south on North 108th Street to Blair High Road, southeast on Blair High Road to Interstate Highway 680, south on Interstate Highway 680 to Pacific Street, west on Pacific Street to Skyline Drive, south on Skyline Drive to South 222nd Street, south on South 222nd Street to the Douglas-Sarpy County line, and east along the Douglas-Sarpy County line to the point of beginning.

Source:

Laws 1967, c. 527, § 2, p. 1751

Laws 1971, LB 735, § 1

Laws 1981, LB 554, § 1

Laws 1991, LB 619, § 2

R.S.1943, (1994), § 79-322.01

Laws 1996, LB 900, § 139

Laws 2001, LB 856, § 2

Section 79-312

State Board of Education districts; description; basis.

The descriptions of districts in section 79-311 are taken from the 2000 TIGER/Line files published by the United States Department of Commerce, Bureau of the Census.

Source:

Laws 1971, LB 735, § 2

Laws 1981, LB 554, § 2

Laws 1991, LB 619, § 3

R.S.1943, (1994), § 79-322.02

Laws 1996, LB 900, § 140

Laws 2001, LB 856, § 3

Section 79-313

State Board of Education; members; qualifications.

No person shall be eligible to membership on the State Board of Education (1) who is actively engaged in the teaching profession, (2) who is a holder of any state office, a member of a state board or commission unless the board or commission is limited to an advisory capacity, or a candidate for any state office, or board or commission unless the board or commission is limited to an advisory capacity, or (3) unless he or she is a citizen of the United States, a resident of the state for a period of at least six months, and a resident of the district from which he or she is elected for a period of at least six months immediately preceding his or her election.

Source:

Laws 1953, c. 320, § 3, p. 1054

Laws 1994, LB 76, § 590

R.S.1943, (1994), § 79-323

Laws 1996, LB 900, § 141

Laws 2001, LB 797, § 8

Section 79-314

State Board of Education; members; vacancies; how filled.

Vacancies occurring on the State Board of Education between one general election and another shall be filled by appointment by the Governor from among qualified persons residing in the district in which the vacancy occurs. Such appointments shall be in writing and continue for the unexpired term and until a successor is elected and qualified. The written appointment shall be filed with the Secretary of State.

Source:

Laws 1953, c. 320, § 4, p. 1054

Laws 1957, c. 124, § 24, p. 436

R.S.1943, (1994), § 79-324

Laws 1996, LB 900, § 142

Section 79-315

State Board of Education; members; officers; Commissioner of Education; appointment; term; removal; seal; powers.

The State Board of Education shall elect from its own membership a president and a vice president and otherwise organize itself for the conduct of business. It shall then consider the appointment of and contracting for a Commissioner of Education whose appointment may be for a period of three years. During such term the commissioner may be removed from office for the causes set forth in subdivision (2) of section 79-318. The commissioner shall be the secretary of the board. The board shall reorganize itself each two years at its first meeting in the next calendar year following a general election. The board shall constitute a body corporate to be known as the State Board of Education, and as such it shall adopt and make use of a common seal and may receive, hold, and use money and real and personal property for the benefit of the school system of the state.

Source:

Laws 1953, c. 320, § 5, p. 1055

Laws 1969, c. 707, § 1, p. 2711

Laws 1971, LB 525, § 1

Laws 1982, LB 654, § 1

R.S.1943, (1994), § 79-325

Laws 1996, LB 900, § 143

Section 79-316

State Board of Education; members; impeachment; grounds.

Members of the State Board of Education shall be liable to impeachment in the same manner and on the same grounds as other state officers.

Source:

Laws 1953, c. 320, § 6, p. 1055

Laws 1971, LB 421, § 1

R.S.1943, (1994), § 79-326

Laws 1996, LB 900, § 144

Section 79-317

State Board of Education; meetings; open to public; exceptions; compensation and expenses.

(1) The State Board of Education shall meet regularly and periodically in the office of the State Department of Education at least four times annually. Meetings shall be held during the first full week in June and during the first full week in December of each year. The board may meet at such other times and places as it may determine necessary for the proper and efficient conduct of its duties. Special meetings may be called in accordance with this section and the Open Meetings Act. Five members of the board shall constitute a quorum.

(2) The public shall be admitted to all meetings of the State Board of Education except to such closed sessions as the board may direct in accordance with the Open Meetings Act. The board shall cause to be kept a record of all public meetings and proceedings of the board. The commissioner, or his or her designated representative, shall be present at all meetings except when the order of business for the board is the selection of a Commissioner of Education.

(3) The members of the State Board of Education shall receive no compensation for their services but shall be reimbursed for actual and essential expenses incurred in attending meetings or incurred in the performance of duties as directed by the board as provided in sections 81-1174 to 81-1177.

Source:

Laws 1953, c. 320, § 7, p. 1055

Laws 1971, LB 421, § 2

Laws 1975, LB 325, § 7

Laws 1981, LB 204, § 153

R.S.1943, (1994), § 79-327

Laws 1996, LB 900, § 145

Laws 2004, LB 821, § 24

Effective date July 16, 2004

Cross References:

Open Meetings Act, see section 84-1407.

Section 79-318

State Board of Education; powers; duties.

The State Board of Education shall:

- (1) Appoint and fix the compensation of the Commissioner of Education;
- (2) Remove the commissioner from office at any time for conviction of any crime involving moral turpitude or felonious act, for inefficiency, or for willful and continuous disregard of his or her duties as commissioner or of the directives of the board;
- (3) Upon recommendation of the commissioner, appoint and fix the compensation of a deputy commissioner and all professional employees of the board;
- (4) Organize the State Department of Education into such divisions, branches, or sections as may be necessary or desirable to perform all its proper functions and to render maximum service to the board and to the state school system;
- (5) Provide, through the commissioner and his or her professional staff, enlightened professional leadership, guidance, and supervision of the state school system, including educational service units. In order that the commissioner and his or her staff may carry out their duties, the board shall, through the commissioner: (a) Provide supervisory and consultation services to the schools of the state; (b) issue materials helpful in the development, maintenance, and improvement of educational facilities and programs; (c) establish rules and regulations which govern standards and procedures for the approval and legal operation of all schools in the state and for the accreditation of all schools requesting state accreditation. All public, private, denominational, or parochial schools shall either comply with the accreditation or approval requirements prescribed in this section and section 79-703 or, for those schools which elect not to meet accreditation or approval requirements, the requirements prescribed in subsections (2) through (6) of section 79-1601. Standards and procedures for approval and accreditation shall be based upon the program of studies, guidance services, the number and preparation of teachers in relation to the curriculum and enrollment, instructional materials and equipment, science facilities and equipment, library facilities and materials, and health and safety factors in buildings and grounds. Rules and regulations which govern standards and procedures for private, denominational, and parochial schools which elect, pursuant to the procedures prescribed in subsections (2) through (6) of section 79-1601, not to meet state accreditation or approval requirements shall be as described in such section; (d) institute a statewide system of testing to determine the degree of achievement and accomplishment of all the students within the state's school systems if it determines such testing would be advisable; (e) prescribe a uniform system of records and accounting for keeping adequate educational and financial records, for gathering and reporting necessary educational data, and for evaluating educational progress; (f) cause to be published laws, rules, and regulations governing the schools and the school lands and funds with explanatory notes for the guidance of those charged with the administration of the schools of the state; (g) approve teacher education programs conducted in Nebraska postsecondary educational institutions designed for the purpose of certificating teachers and administrators; (h) approve teacher evaluation policies and procedures developed by school districts and educational service units; and (i) approve general plans and adopt educational policies, standards, rules, and regulations for carrying out the board's responsibilities and those assigned to the State Department of Education by the Legislature;
- (6) Adopt and promulgate rules and regulations for the guidance, supervision, accreditation, and coordination of educational service units. Such rules and regulations for accreditation shall include, but not be limited to, (a) a requirement that programs and services offered to school districts by each educational service unit shall be evaluated on a regular basis, but not less than every seven years, to assure that

educational service units remain responsive to school district needs and (b) guidelines for the use and management of funds generated from the property tax levy and from other sources of revenue as may be available to the educational service units, to assure that public funds are used to accomplish the purposes and goals assigned to the educational service units by section 79-1204. The State Board of Education shall establish procedures to encourage the coordination of activities among educational service units and to encourage effective and efficient educational service delivery on a statewide basis;

(7) Submit a biennial report to the Governor and the Clerk of the Legislature covering the actions of the board, the operations of the State Department of Education, and the progress and needs of the schools and recommend such legislation as may be necessary to satisfy these needs;

(8) Prepare and distribute reports designed to acquaint school district officers, teachers, and patrons of the schools with the conditions and needs of the schools;

(9) Provide for consultation with professional educators and lay leaders for the purpose of securing advice deemed necessary in the formulation of policies and in the effectual discharge of its duties;

(10) Make studies, investigations, and reports and assemble information as necessary for the formulation of policies, for making plans, for evaluating the state school program, and for making essential and adequate reports;

(11) Submit to the Governor and the Legislature a budget necessary to finance the state school program under its jurisdiction, including the internal operation and maintenance of the State Department of Education;

(12) Interpret its own policies, standards, rules, and regulations and, upon reasonable request, hear complaints and disputes arising therefrom;

(13) With the advice of the Department of Motor Vehicles, adopt and promulgate rules and regulations containing reasonable standards, not inconsistent with existing statutes, governing: (a) The general design, equipment, color, operation, and maintenance of any vehicle with a manufacturer's rated seating capacity of eleven or more passengers used for the transportation of school children; and (b) the equipment, operation, and maintenance of any vehicle with a capacity of ten or less passengers used for the transportation of school students, when such vehicles are owned, operated, or owned and operated by any school district or privately owned or operated under contract with any school district in this state. Similar rules and regulations shall be adopted and promulgated for operators of such vehicles as provided in section 79-607;

(14) Accept, on behalf of the Nebraska Center for the Education of Children who are Blind or Visually Impaired, formerly the Nebraska School for the Visually Handicapped, devise of real property or donations or bequests of other property, or both, if in its judgment any such devise, donation, or bequest is for the best interest of the center or the students receiving services from the center, or both, and irrigate or otherwise improve any such real estate when in the board's judgment it would be advisable to do so; and

(15) Upon acceptance of any devise, donation, or bequest as provided in this section, administer and carry out such devise, donation, or bequest in accordance with the terms and conditions thereof. If not prohibited by the terms and conditions of any such devise, donation, or bequest, the board may sell, convey, exchange, or lease property so devised, donated, or bequeathed upon such terms and conditions as it deems best and remit all money derived from any such sale or lease to the State Treasurer for credit to the State Department of Education Trust Fund.

Each member of the Legislature shall receive a copy of the report required by subdivision (7) of this section by making a request for it to the commissioner.

None of the duties prescribed in this section shall prevent the board from exercising such other duties as in its judgment may be necessary for the proper and legal exercise of its obligations.

Source:

Laws 1953, c. 320, § 8, p. 1056
Laws 1955, c. 306, § 1, p. 947
Laws 1959, c. 383, § 1, p. 1328
Laws 1967, c. 528, § 2, p. 1753
Laws 1969, c. 707, § 2, p. 2712
Laws 1969, c. 708, § 1, p. 2716
Laws 1971, LB 292, § 5
Laws 1974, LB 863, § 8
Laws 1977, LB 205, § 1
Laws 1979, LB 322, § 37
Laws 1981, LB 316, § 1
Laws 1981, LB 545, § 27
Laws 1984, LB 928, § 2
Laws 1984, LB 994, § 6
Laws 1986, LB 1177, § 36
Laws 1987, LB 688, § 11
Laws 1989, LB 15, § 1
Laws 1989, LB 285, § 141
Laws 1990, LB 980, § 34
Laws 1994, LB 858, § 3
R.S.1943, (1994), § 79-328
Laws 1996, LB 900, § 146
Laws 1999, LB 813, § 6

Cross References:

Gifts, devises, and bequests, loans to needy students, see section 79-2,106.

Private, denominational, or parochial schools, election not to meet approval or accreditation requirements, see section 79-1601.

Annotations:

The state, having a high responsibility for the education of its citizens, has the power to impose reasonable regulations for the control and duration of basic education. Parents have a right to send their children to private schools but do not have the right to be completely unfettered by reasonable government regulations as to the quality of the education furnished and the maintenance of minimum

standards. *State ex rel. Douglas v. Faith Baptist Church of Louisville*, 207 Neb. 802, 301 N.W.2d 571 (1981).

Adequate standards are provided by this section to authorize transfer of land from a nonaccredited to an accredited high school district. *De Jonge v. School Dist. of Bloomington*, 179 Neb. 539, 139 N.W.2d 296 (1966).

Matters to be considered in promulgating rules and regulations are specified. *School Dist. No. 8 of Sherman County v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458 (1964).

Standards were not effective until filed with Secretary of State. *School Dist. No. 228 of Holt County v. State Board of Education*, 164 Neb. 148, 82 N.W.2d 8 (1957).

This section was not applicable to supply standards in cases arising before its enactment. *School Dist. No. 39 of Washington County v. Decker*, 159 Neb. 693, 68 N.W.2d 354 (1955).

Section 79-319

State Board of Education; additional powers; enumerated.

The State Board of Education has the authority to (1) provide for the education of and approve special educational facilities and programs provided in the public schools for children with disabilities, (2) act as the state's authority for the approval of all types of veterans educational programs which are financially supported in whole or in part by the federal government, (3) supervise and administer any educational or training program established within the state by the federal government, except postsecondary education in approved colleges, (4) coordinate educational activities in the state that pertain to elementary and secondary education and such other educational programs as are placed by statute under the jurisdiction of the board, (5) receive and distribute according to law any money, commodities, goods, or services made available to the board from the state or federal government or from any other source and distribute money in accordance with the terms of any grant received, including the distribution of money from grants by the federal government to schools, preschools, day care centers, day care homes, nonprofit agencies, and political subdivisions of the state or institutions of learning not owned or exclusively controlled by the state or a political subdivision thereof, so long as no public funds of the state, any political subdivision, or any public corporation are added to such federal grants, (6) publish, from time to time, directories of schools and educators, pamphlets, curriculum guides, rules and regulations, handbooks on school constitution and other matters of interest to educators, and similar publications. Such publications may be distributed without charge to schools and school officials within this state or may be sold at a price not less than the actual cost of printing. The proceeds of such sale shall be remitted to the State Treasurer for credit to the State Department of Education Cash Fund which may be used by the State Department of Education for the purpose of printing and distributing further such publications on a nonprofit basis. The board shall furnish eight copies of such publications to the Nebraska Publications Clearinghouse, and (7) when necessary for the proper administration of the functions of the department and with the approval of the Governor and the Department of Administrative Services, rent or lease space outside the State Capitol.

Source:

Laws 1953, c. 320, § 9, p. 1058

Laws 1959, c. 384, § 1, p. 1332

Laws 1961, c. 395, § 1, p. 1202

Laws 1963, c. 469, § 5, p. 1504

Laws 1972, LB 1284, § 20

Laws 1974, LB 863, § 9

Laws 1975, LB 359, § 2

Laws 1976, LB 733, § 1

Laws 1985, LB 417, § 1

Laws 1986, LB 997, § 7

R.S.1943, (1994), § 79-329

Laws 1996, LB 900, § 147

Section 79-320

State Board of Education; liability insurance; for whom.

The State Board of Education has the authority to purchase and maintain insurance, on behalf of the Commissioner of Education or any person who is or was a member, officer, employee, or agent of the State Board of Education, against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the State Board of Education would have the power to indemnify the individual against such liability under any other provision of law.

Source:

Laws 1977, LB 146, § 1

Laws 1981, LB 472, § 1

R.S.1943, (1994), § 79-329.01

Laws 1996, LB 900, § 148

Section 79-321

State Board of Education; State Board of Vocational Education; assumption of powers and duties; Commissioner of Education; duties.

(1) The State Board of Education shall replace the State Board of Vocational Education and, when acting as the State Board of Vocational Education, shall assume the duties and powers provided in sections 79-738 to 79-744.

(2) The Commissioner of Education shall be the executive officer of the State Board of Vocational Education.

Source:

Laws 1953, c. 320, § 10, p. 1059

Laws 1990, LB 1090, § 3

Laws 1993, LB 348, § 12

R.S.1943, (1994), § 79-330

Laws 1996, LB 900, § 149

Laws 1998, Spec. Sess., LB 1, § 10

Section 79-738

State Board of Vocational Education; legislation and funds; duties.

The State Board of Vocational Education shall administer any legislation relating to vocational education enacted by the Legislature and shall direct the disbursement of and administer the use of all funds provided for vocational education and assigned to the State Department of Education.

Source:

Laws 1917, c. 227, § 1, p. 559

Laws 1921, c. 68, § 1, p. 259

C.S.1922, §§ 6554a, 6556

C.S.1929, §§ 79-2201, 79-2206

R.S.1943, § 79-2201

Laws 1949, c. 267, § 1, p. 881

Laws 1949, c. 256, § 408, p. 828

Laws 1955, c. 325, § 1, p. 1007

Laws 1990, LB 1090, § 31

R.S.1943, (1994), § 79-1419

Laws 1996, LB 900, § 412

Section 79-739

Vocational education; State Treasurer, custodian of funds.

The State Treasurer shall be the custodian of all funds allotted to this state from other sources for purposes of vocational education. He or she shall receive and provide for the proper custody and disbursement of such funds.

Source:

Laws 1917, c. 227, § 2, p. 559

C.S.1922, § 6554b

C.S.1929, § 79-2202

R.S.1943, § 79-2202

Laws 1949, c. 256, § 409, p. 829

Laws 1990, LB 1090, § 32

R.S.1943, (1994), § 79-1420

Laws 1996, LB 900, § 413

Section 79-740

State Board of Vocational Education; designation; meetings; quorum; executive officer.

(1) The State Board of Education shall also be the State Board of Vocational Education and, when acting as the State Board of Vocational Education, shall assume the powers and duties provided in sections 79-738 to 79-744.

(2) The Commissioner of Education shall be the executive officer of the State Board of Vocational Education. The members of the State Board of Vocational Education shall receive no compensation for their services. They shall be reimbursed for actual and essential expenses incurred in attending meetings or incurred in the performance of their duties as provided in sections 81-1174 to 81-1177. The State Board of Vocational Education shall meet in the office of the State Department of Education at least four times annually. It may meet at such other times and places as the board determines necessary for the proper and efficient conduct of its duties. Special meetings may be called by the presiding officer upon a written notice given at least five days preceding the meeting. In the absence of such a call by the presiding officer, the Commissioner of Education shall call such special meeting upon the written request of a majority of the board. Five members of the board shall constitute a quorum for the transaction of business.

Source:

Laws 1917, c. 227, § 3, p. 559

Laws 1921, c. 75, § 1, p. 282

C.S.1922, § 6555

C.S.1929, § 79-2203

Laws 1941, c. 164, § 12, p. 657

C.S.Supp.,1941, § 79-2203

Laws 1943, c. 206, § 1, p. 685

R.S.1943, § 79-2203

Laws 1949, c. 256, § 410, p. 829

Laws 1951, c. 290, § 1, p. 958

Laws 1953, c. 313, § 1, p. 1038

Laws 1955, c. 325, § 2, p. 1008

Laws 1971, LB 421, § 3

Laws 1981, LB 204, § 160

Laws 1990, LB 1090, § 33

Laws 1993, LB 348, § 44

R.S.1943, (1994), § 79-1421

Laws 1996, LB 900, § 414

Cross References:

Assistant commissioner of education in charge of vocational education, appointment, see section 79-321.

Annotations:

Rule-making authority of State Board of Education extends to State Board of Vocational Education. *Campbell v. Area Vocational Technical School No. 2*, 183 Neb. 318, 159 N.W.2d 817 (1968).

Section 79-741

State Board of Vocational Education; duties.

The State Board of Vocational Education shall adopt the policies to be followed in administering vocational education and shall supervise the administration of the policies by the Commissioner of Education. The board shall cooperate with the United States Department of Education in the administration of federal legislation relating to vocational education and shall do all things necessary to entitle the state to receive the benefits of such federal legislation. The board may adopt and promulgate rules and regulations to carry out sections 79-738 to 79-744.

Source:

Laws 1917, c. 227, § 4, p. 560

C.S.1922, § 6555a

C.S.1929, § 79-2204

Laws 1943, c. 206, § 2, p. 686

R.S.1943, § 79-2204

Laws 1949, c. 256, § 411, p. 829

Laws 1955, c. 324, § 10, p. 1005

Laws 1955, c. 325, § 3, p. 1008

Laws 1959, c. 413, § 3, p. 1381

Laws 1978, LB 756, § 50

Laws 1990, LB 1090, § 34

Laws 1993, LB 348, § 45

R.S.1943, (1994), § 79-1422

Laws 1996, LB 900, § 415

Laws 1998, Spec. Sess., LB 1, § 14

Section 79-742

State Board of Vocational Education; staff members; appointment.

The State Board of Vocational Education shall, on the recommendation of the Commissioner of Education, appoint staff members to carry out sections 79-738 to 79-744.

Source:

Laws 1917, c. 227, § 5, p. 560

C.S.1922, § 6555b

C.S.1929, § 79-2205

Laws 1943, c. 206, § 3, p. 686

R.S.1943, § 79-2205

Laws 1947, c. 288, § 1, p. 897

Laws 1949, c. 256, § 412, p. 830

Laws 1951, c. 290, § 2, p. 959

Laws 1953, c. 314, § 1, p. 1041

Laws 1955, c. 325, § 4, p. 1009

Laws 1990, LB 1090, § 35

Laws 1993, LB 348, § 46

R.S.1943, (1994), § 79-1423

Laws 1996, LB 900, § 416

Section 79-743

Vocational school, department, or course; establishment; reimbursement; when.

(1) Any school board or board of education may establish, with the approval of the State Board of Vocational Education, a vocational school, department, or course providing instruction necessary for the preparation of individuals for paid or unpaid employment in occupations not requiring a baccalaureate or

advanced degree and vocational student organization activities which function as an integral part of the school, department, or course.

(2) Vocational schools, departments, or courses, when approved by the State Board of Vocational Education, shall be reimbursed in accordance with the terms specified annually in the contracts between the local board and the state board.

Source:

Laws 1919, c. 267, § 4, p. 1069

C.S.1922, § 6563

C.S.1929, § 79-2213

R.S.1943, § 79-2210

Laws 1949, c. 256, § 417, p. 832

Laws 1951, c. 290, § 6, p. 961

Laws 1955, c. 325, § 5, p. 1009

Laws 1990, LB 1090, § 36

R.S.1943, (1994), § 79-1428

Laws 1996, LB 900, § 417

Laws 1997, LB 347, § 19

Section 79-744

State Board of Vocational Education; additional duties.

The State Board of Vocational Education shall (1) cooperate with the boards authorized by sections 79-738 to 79-744 to establish vocational schools, departments, or courses, (2) cooperate with the United States Department of Education in the administration of federal legislation relating to vocational education and the Nebraska State Plan for Vocational Education, (3) administer the funds provided by the federal government under such federal legislation, by the State of Nebraska, and by donations or contributions for the promotion of vocational education in the public schools of Nebraska, (4) appoint staff members to administer such federal legislation and sections 79-738 to 79-744 for the State of Nebraska, (5) fix the compensation of such personnel and pay such compensation and other necessary expenses of administration from funds appropriated by the Legislature or available federal funds, (6) make studies and investigations relative to vocational education, (7) promote and aid in the establishment of vocational schools, departments, or courses in communities giving training in such subjects and cooperate with local boards in the maintenance of such schools, departments, or courses, (8) prescribe qualifications and provide for the certification of teachers and supervisors of vocational education and related subjects, (9) cooperate in the maintenance of postsecondary training courses for the preparation of teachers and supervisors of vocational education and related subjects or maintain such courses under its own direction and control, and (10) establish and determine by general regulations the qualifications to be possessed by persons engaged in the training of vocational teachers.

Source:

Laws 1919, c. 267, § 5, p. 1070

C.S.1922, § 6564

C.S.1929, § 79-2214

R.S.1943, § 79-2211

Laws 1949, c. 256, § 418, p. 833

Laws 1951, c. 290, § 7, p. 962

Laws 1953, c. 313, § 2, p. 1039

Laws 1955, c. 325, § 6, p. 1010

Laws 1978, LB 756, § 51

Laws 1980, LB 724, § 1

Laws 1990, LB 1090, § 37

Laws 1991, LB 663, § 43

Laws 1993, LB 348, § 47

Laws 1993, LB 239, § 5

R.S.1943, (1994), § 79-1429

Laws 1996, LB 900, § 418

Laws 1997, LB 347, § 20

APPENDIX C:

HISTORICAL NOTES

- I. Statehood to 1869
 - a. Auditor served as the “Commissioner of Common Schools”
 - b. In 1869 “An Act for the Revision of School Laws” passed the legislature on February 15, 1869 and the State Superintendent for Public Instruction was established as a statewide elective office. First state superintendent for public instruction was appointed by the governor according to the law.
- II. 1871-1872
 - a. First elected Superintendent for Public Instruction, J.M. McKenzie takes office in January, 1871
 - b. McKenzie publishes 3rd and 4th annual reports of the state superintendent
 - c. McKenzie’s reports are full of recommendations for improvements to education policy and law in an attempt to shape and guide the young state’s formalized educational system.
 - d. The following recommendations are from the Fourth Annual Report of the State Superintendent of Public Instruction to the Governor of Nebraska; for the year ending December 31st, 1872 :

RECOMMENDATIONS

After having discussed the various subjects that I deem important at some length, I now desire to state, in a concise form, those that need the special attention of the legislature.

I recommend that our School Law be amended on the following points:

1st. District officers should be sworn officers; compensation; penalty for failure to discharge duties; how removed from office; time of making reports; kind of reports.

2d. Division of district property.

3d. Apportionment of school fund.

4th. Grades of teachers’ certificates.

5th. Proper district record books.

6th. Power to issue district bonds.

7th. Teachers’ Institutes.

8th. Sites for school houses.

9th. Sales of Normal School lands.

I would also recommend that each district be authorized to subscribe for one copy of the “Nebraska Teacher;” and that ample provision be made for sustaining the State Normal School.

That provision also be made for securing plans and specifications and suitable “wood-cuts” of convenient and cheap school houses.

Respectfully submitted,

J. M. McKENZIE.

- e. The early reports are open commentaries on the state of the school system and on the administration of the schools. Naturally, the development of the statewide school system was evolving as necessary across the state and the policy decisions of the time were largely based on settlement and necessity. For example the following

excerpt from the 1872 points out the considerations of the time in the formation of school districts:

The separate district plan, I am aware, is not entirely free from objections. It requires a large force to manipulate it, and it is frequently difficult to obtain suitable persons in each district to carry out its provisions successfully. Yet, in our sparsely settled State, it would be nearly impossible to adopt the township plan. Were an entire township, or precinct (for it will be many years yet before township organizations will be general) placed under the control of these men, school houses would be built in the thickly settled portions, while the sparsely settled sections would have no benefit whatever of the school house, although all the inhabitants were taxed to build it. (p. 10)

- f. The issues raised by McKenzie in the recommendations are a direct observation of the efforts of the time. For instance the “division of district property” actually refers to districts that are formed from other districts when they have developed sufficient population to justify a new district. This essentially was left up to the county superintendent and the state superintendent was asking for additional legal guidance. So it is a matter of shaping the original education system and policy that the early policy makers undertook

III. 1875

- a. Nebraska adopts a constitution as a result of the 1875 constitutional convention which included many of the provisions of the 1871 convention which was rejected on a statewide vote. This constitutional language was the fundamental law of the state until January 1, 1921 (Source: Nebraska Bluebook, 2006-07)
- b. The Superintendent of Public Instruction is listed in Article V of the 1875 constitution as an officer of the “executive department”. No other constitutional guidance or powers/duties are granted in 1875.

IV. 1878 - 1880

- a. S. R. Thompson, State Supt. of Public Instruction reports the need to revise the school law the “principal part” of which was passed in 1869.
- b. Thompson reports that “[a]t every session of the Legislature since 1869, changes have been made in the School Law; sections have been repealed and new ones added; provisions have been added to certain sections and removed from others; and the new constitution has practically abrogated several sections and modified others. To make these changes with out changing the numbers of the old sections has required much ingenuity, and has led to the adoption of many curious and sometimes not very satisfactory expedients.” (p.8)
- c. Thompson continues “The effect of these changes is, that the law is much less easily understood than it ought to be, and the same subject being treated of in different parts of the law, it is not easy of reference. Under our separate district system, with nearly 8,000 school officers, many of them uneducated and unused to the forms of law, there is no use in trying to have a complicated and obscure law carried into effect. To be observed by men so circumstanced, it must be as plain and plainly written as it is possible to make it.” (pp. 8-9)

- d. Thompson was apparently tasked with organizing a draft of school laws by a “committee on Revision of the Statutes. The proposal was apparently considered in 1878-79 by the legislature but not enacted according to the 1880 report of the State Superintendent (W. W. W. Jones)
- e. Jones reported in the 1880 report, “Two years ago a complete revision of the law was offered to the legislature, was carefully gone over line by line by the education committees of the two houses, and met with general favor. Owing to the late day on which it was offered as a bill, it failed to get through.”
- f. Jones then called on the legislature to consider the revision again and reiterated the outline proposed in Thompson’s 1878 report.

The general plan is to embody in one enactment all the school laws of the state. These have been arranged under the following heads:

- I. School Districts.
- II. District Meetings.
- III. District Officers. Election.
- IV. District Officers. Powers and Duties.
- V. District Board. Powers and Duties.
- VI. High School Districts.
- VII. The County Superintendent.
- VIII. The State Superintendent.
- IX. The Teachers.
- X. Teachers’ Institutes.
- XI. School Funds.
- XII. School Sites.
- XIII. The State Normal School.
- XIV. The State University.
- XV. Schools in Cities.

The Sections of each sub-chapter are numbered separately, so that at any time new sections may be added just where they belong.

Obsolete, unused, or repealed provisions were left out, and court decisions on points of school law inserted. The notes and explanations hitherto published with the law were largely incorporated in the text of the revision. No radical or extensive changes were made. (1880, p. 81).

g.

V. 1881 – 1919

- a. The 1881 session of the Legislature enacted the revisions to the school laws.
- b. This revision included the reference to deciding questions of school law. “He shall decide disputed points in school law and all such decisions shall be held to have the force of law until reversed by the courts.”
- c. A 1902 publication “Official Decisions of the State Superintendent of Public Instruction on the School Laws of Nebraska 1881-1902” published by the Department of Public Instruction demonstrates that the state superintendent’s office had grown by the turn of the century and that the formality of “official decisions” was shaping education policy in the state. (One can argue that the process of official decisions was the predecessor to the eventual development of administrative code. The 1881 laws and the legislatures decision to include a reference to decisions of the state superintendent we’re indicative of the need to

“organically” shape education policy in the young state. There were few school districts with “trained” teachers and leadership and the effort was to shape a new school system. That evolution can be seen in the various writings of the early state superintendents and publications such as the aforementioned “Official Decisions”. There was a heavy reliance on the elected county superintendents and they relied on the state superintendent for interpretation.

VI. 1919-20: Constitutional Convention

- a. Several education related proposals were adopted
 - i. 20. provide for the distribution of temporary school fund
 - ii. 21. prohibit sale of school lands except at public auction
 - iii. 22. prohibit state aid to sectarian institutions
 - iv. 24. raise age for commitment to industrial schools from 16 to 18
 - v. 25. provide Board of Education for normal schools
- b. The Board of Education for normal schools was apparently included in the Constitutional changes but the legislature never adopted enacting legislation.

VII. 1920s-1940s

- a. The eventual evolution of the state and federal administrative procedure acts in the mid 1940s began to give way to the modern administration of the state school system. At this point in time the State Superintendent reports were recognizing the policy making role of the legislature as essentially the state board of education. See reports from the 1940s-1952. By 1952 the constitutional amendment to create the modern state board of education, commissioner of education, and department of education. In 1953 the legislature passed LB 285 in an attempt to align statute with new constitutional provisions. Even at the hearing and upon the passage of the bill, there were comments recorded that further revisions would be necessary.
- b. The federal **Administrative Procedure Act (APA)** of 1946 governs the way in which administrative agencies of the United States federal government may propose and establish regulations. The APA also sets up a process for federal courts to directly review agency decisions. As such, it is an important source of authority within federal American administrative law.
**Source:http://en.wikipedia.org/wiki/Administrative_Procedure_Act
- c. The Nebraska Administrative Procedure Act was first passed in the mid 1940s and amended several times since. The Act prescribes policy for the development of rules and regulations requirements for agencies of the state.

VIII. 1947-49: Revision of Nebraska School Laws

- a. The State Superintendent annually reported on problems involving state school laws. This practice dated back to early statehood but evolved to see changes in structure and practice as well as interaction between the attorney general and the state superintendent in the interpretation of school laws.
- b. In the 1947 report, State Superintendent Reed reported that Nebraska had progressed from the common school district with its comparatively simple set of

laws to a complex system which included ten classes of schools and hundreds of laws governing those various classes. This was made more complex by a “long period of successive additions to the laws and minor modifications in them.” He reported that as a consequence, the school laws were “voluminous and complex” with many of them in conflict, obsolete, and/or ambiguous and indefinite. The 1947 Legislature endeavored to study the possibility of recodification and simplification.

- c. In the same 1947 report, Reed noted that “[t]he [state superintendent] Office is called upon to answer a great many inquiries regarding school laws. The above quoted law gives to the State Superintendent the authority to decide disputed points in school law. It does not, however, give him authority to interpret the law, a power that is delegated to the courts and to the Attorney General.”
- d. In the 1948 report, State Superintendent Reed reported that it was clear that a revision of the school laws was necessary to address the “multitude” of questions that were raised each year. He reported that a complete suggested revision of the school laws was prepared by F. B. Decker (then Director of Administration for the Department of Public Instruction and future first Commissioner of Education) A revision was passed by the Legislature in 1949 in L.B. 1
- e. In the 1949 report, Reed for the first time in that form, recommends moving to a State Board of Education. This same basic recommendation is made in the 1950 report by State Supt. Ruff and in the 1951 report by then State Supt. Decker. The recommendations were made in light of an ever increasing role and responsibility on the State Supt. and the desire to spread the policy formulating role to more than a single elected official. By 1951, Decker reported that forty-one states had state boards of education.
- f. By the Summer and Fall of 1950 the Legislature had developed a proposal and in May, 1951, LB 212 was advanced by the Legislature and signed by the Governor. The election was held in November 1952.

IX. 1952: Constitutional Amendment to create the Dept. of Education, State Board, and Commissioner of Education

X. 1953: LBs 285 & 286 to respond statutorily to constitutional changes

- a. Committee Statement on LB 285: “Legislative Bill 285 as amended would provide the machinery for the election of six members of the State Board of Education and for the appointment of the Commissioner of Education to replace the present State Superintendent of Public Instruction. This procedure was authorized by the approval of a constitutional amendment in the November, 1952, election. The bill also provides for an assistant commissioner of education to be in charge of vocational education. Representatives of the various educational organizations and vocational education organizations appeared in favor of the measure and there was no opposition. In accordance with the constitutional amendment, the committee felt that this bill would authorized the procedures which the people of Nebraska desired and voted the bill to general file unanimously.” SIGNED: Richard D. Marvel, Chairman (April 15, 1953).

- b. Committee Statement on LB 286: “Legislative Bill 286 is a companion bill to LB 285 and supplements the action necessary to put into effect a State Board of Education. No one appeared in opposition to this measure and the committee voted the bill to general file unanimously.” SIGNED: Richard D. Marvel, Chairman (April 15, 1953).
- c. The only available official record from the deliberation on LB 285 and LB 286 is in the committee statements, limited minutes from the March 24, 1953 hearing, and the journal.
 - i. Senator Williams, introducer of the bills, stated these bills were drafted as a result of the 1952 constitutional amendment
 - ii. The State Superintendent of Public Instruction in 1953, Freeman B. Decker testified in favor of the bills and noted that the bills “represented a tremendous amount of work and he believes the bill had 100% support of the school people, board members, P.T.A., etc.
 - iii. Decker suggested three amendments. Notably, one amendment was recommended regarding the Commissioner’s qualifications that ended up in statute. Decker suggested that the words “and shall hold” be stricken and in its place insert “qualify for” “because this present wording could prevent anyone from out of the state from taking the job because he wouldn’t have a certificate from Nebraska.” This reference is in reference to the qualification to qualify for the highest administrative certificate in the state.
 - iv. Decker also offered a recommendation insert a reference to a deputy commissioner. There are few such references to the deputy in current statute.

XI. 1955: First year of implementation of the 1952 Constitutional and 1953 statutory changes creating the modern Department of Education, State Board of Education, and Commissioner of Education. The former Department of Public Instruction and the former role of the state Superintendent of Public Instruction were substantially incorporated into the new Department. F.B. Decker became the first “commissioner of education”. He wrote about the change in his 1956 annual report.

- a. The following excerpt is taken from the 1956 annual report issued by F. B. Decker, Commissioner of Education.

Nebraska’s State Department of Education
What took the Place of the Old Department of Public Instruction?

Nebraska is one of forty-four States in the Union which now have a State Board of Education. This Board became operative in January, 1955. Its members are elected by the people. It may well be likened in some respects to a board of education which serves a local school district. Just as a local school board represents the people of the district and has the authority and responsibility for elementary and secondary education in the local schools, so the State Board of Education represents the people of the State in education matters that pertain primarily to the State’s elementary and

secondary general education programs. Nebraska's State Board of Education also has responsibility for vocational education.

Just as the most important task of a local school board is that of appointing a well-qualified superintendent of schools so, too, the most important task of the State Board of Education is to select a superintendent of Nebraska schools, or a Commissioner of Education as he is now termed under Nebraska's new State structure for education. This chief state school officer has the responsibility for continually studying the education needs of the State just as a local school superintendent has the duty of continually studying the education needs of his district or community. A local school superintendent in light of these needs makes recommendations from time to time to his local board of education. So, too, does the Commissioner of Education in Nebraska make recommendations from time to time to the State Board of Education regarding the education needs of the State and also regarding the staffing and internal organization of the State Department of Education.

In summary, the Commissioner of Education is the Executive Officer of the State Board of Education somewhat as the local school superintendent is the executive officer of the local board of education. Both of these executives are charged with the responsibility for carrying out the policies adopted by their boards of education.

Members of the State Board of Education represent no special interests as such. They are a lay group. They are not paid salaries. In these respects they are also similar to the members of local school boards.

The magnitude of educational problems faced in Nebraska taxes the leadership and the resources of the State Department of Education to the utmost. These problems cannot be solved effectively under an organization structure which does not lend itself to efficient functioning.

Organization structures first are ideas, they appear in practice, and then gradually undergo appropriate revision with the changing times. In Nebraska, this revision has taken the form of the recently organized State Department of Education. This organization took the place of the old structure which was known as the Department of Public Instruction. This means that now all of the duties that were once possessed by the State Superintendent of Public Instruction are now possessed by the State Department of Education, or the Commissioner of Education, as provided by law.

Source: *Nebraska Education - The Annual Report of the State Board of Education to the Governor of the State of Nebraska For the Year Ending December 31, 1956 Issued by F. B Decker, Commissioner of Education (January 1, 1957).* p. 16

- XII. 1960 and 1964: Constitutional amendments to provide for the election of the Commissioner of Education failed (For: 228,321 / Against 304,014 in 1960 and For: 222,667 / Against: 324,266 in 1964) (Source: Nebraska Bluebook).
- XIII. 1964: School Dist. No. 8 of Sherman Co. v. State Board of Education
 - a. The Nebraska Supreme Court issued a decision regarding the authority of the State Board of Education to enforce an order on a school district. The district claimed that it was an unconstitutional delegation of legislative power. The court disagreed

with the plaintiff school district. However, it ruled that state board did not properly follow administrative law in the exercise of the decision making power.

- b. The court wrote, “If the State Department of Education could with impunity disregard a mandatory provision of the statute in the delegation of authority to it, it could disregard others on the authority of the first, with the result that the control of the Legislature would be lost. Compliance with the mandate of the Legislature in the delegation of power and authority to an agency of government is in effect a condition precedent to the exercise of such power and authority.” The court continued, “The delegation of authority and power does not ordinarily imply a parting with the powers of the Legislature, but points rather to the conferring of authority or power to do the things which otherwise the Legislature would have to do itself. The Legislature may therefore provide the conditions and limitations with which the agency must comply before the authority or power may be exercised.” (pp. 732-733 Nebraska Reports Vol. 176, 1964)
- c. The court also stated “The authority and power delegated by the Legislature is therefore ineffective and dormant until such time as appropriate rules are adopted in accordance with statute.”

XIV. 1966: Constitutional Amendment to expand the State Board of Education to eight members passed

XV. Federal Role during the development of the modern Nebraska Department of Education:

- a. Federal Role in Education (Source: <http://www.ed.gov/about/overview/fed/role.html>)

United States Department of Education History

The original Department of Education was created in 1867 to collect information on schools and teaching that would help the States establish effective school systems. While the agency's name and location within the Executive Branch have changed over the past 130 years, this early emphasis on getting information on what works in education to teachers and education policymakers continues down to the present day.

The passage of the Second Morrill Act in 1890 gave the then-named Office of Education responsibility for administering support for the original system of land-grant colleges and universities. Vocational education became the next major area of Federal aid to schools, with the 1917 Smith-Hughes Act and the 1946 George-Barden Act focusing on agricultural, industrial, and home economics training for high school students.

World War II led to a significant expansion of Federal support for education. The Lanham Act in 1941 and the Impact Aid laws of 1950 eased the burden on communities affected by the presence of military and other Federal installations by making payments to school districts. And in 1944, the "GI Bill" authorized postsecondary education assistance that would ultimately send nearly 8 million World War II veterans to college.

The Cold War stimulated the first example of comprehensive Federal education legislation, when in 1958 Congress passed the National Defense Education Act (NDEA) in response to the Soviet launch of Sputnik. To help ensure that highly trained individuals would be available to help America compete with the Soviet Union in scientific and technical fields, the NDEA included support for loans to college students, the improvement of science, mathematics, and foreign language instruction in elementary and secondary schools, graduate fellowships, foreign language and area studies, and vocational-technical training.

The anti-poverty and civil rights laws of the 1960s and 1970s brought about a dramatic emergence of the Department's equal access mission. The passage of laws such as Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973 which prohibited discrimination based on race, sex, and disability, respectively made civil rights enforcement a fundamental and long-lasting focus of the Department of Education. In 1965, the Elementary and Secondary Education Act launched a comprehensive set of programs, including the Title I program of Federal aid to disadvantaged children to address the problems of poor urban and rural areas. And in that same year, the Higher Education Act authorized assistance for postsecondary education, including financial aid programs for needy college students.

In 1980, Congress established the Department of Education as a Cabinet level agency. Today, ED operates programs that touch on every area and level of education. The Department's elementary and secondary programs annually serve more than 14,000 school districts and some 56 million students attending more than 97,000 public schools and 28,000 private schools. Department programs also provide grant, loan, and work-study assistance to nearly 11 million postsecondary students.

APPENDIX D:

NEBRASKA ADMINISTRATIVE PROCEDURE ACT

84-920. Act, how cited.

Sections 84-901 to 84-920 shall be known and may be cited as the Administrative Procedure Act.

Source: Laws 1987, LB 253, § 22; ; Laws 1994, LB 446, § 38; ; Laws 1995, LB 490, § 191; ; Laws 2005, LB 373, § 8. ;

84-901. Terms, defined.

For purposes of the Administrative Procedure Act:

(1) Agency shall mean each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules and regulations, except the Adjutant General's office as provided in Chapter 55, the courts including the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, the Legislature, and the Secretary of State with respect to the duties imposed by the act;

(2) Rule or regulation shall mean any rule, regulation, or standard issued by an agency, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure. Rule or regulation shall not include (a) rules and regulations concerning the internal management of the agency not affecting private rights, private interests, or procedures available to the public or (b) permits, certificates of public convenience and necessity, franchises, rate orders, and rate tariffs and any rules of interpretation thereof. For purposes of the act, every rule and regulation which prescribes a penalty shall be presumed to have general applicability or to affect private rights and interests;

(3) Contested case shall mean a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing;

(4) Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Filing and notice of filing provided under subdivision (6)(d) of section 84-914 shall not be considered on the record and reasonable notice for purposes of this subdivision. Ex parte communication shall not include:

(a) Communications which do not pertain to the merits of a contested case;

(b) Communications required for the disposition of ex parte matters as authorized by law;

(c) Communications in a ratemaking or rulemaking proceeding; and

(d) Communications to which all parties have given consent; and

(5) Hearing officer shall mean the person or persons conducting a hearing, contested case, or other proceeding pursuant to the act, whether designated as the presiding officer, administrative law judge, or some other title designation.

Source: Laws 1945, c. 255, § 1, p. 795;; Laws 1947, c. 350, § 1, p. 1097;; Laws 1951, c. 342, § 1, p. 1128;; Laws 1959, c. 456, § 1, p. 1510;; Laws 1974, LB 819, § 11;; Laws 1978, LB 44, § 1;; Laws 1981, LB 130, § 1;; Laws 1986, LB 992, § 1;; Laws 1987, LB 253, § 1;; Laws 1994, LB 414, § 135;; Laws 1994, LB 446, § 14.;

1. Contested case Pursuant to subsection (3) of this section, a proceeding becomes a contested case when notice and a hearing are required. *Stoneman v. United Neb. Bank*, 254 Neb. 477, 577 N.W.2d 271 (1998). At a hearing before the Nebraska Liquor Control Commission on a contested case, the applicant is entitled to notice of the issues. *J K & J, Inc. v. Nebraska Liquor Control*

Commission, 194 Neb. 413, 231 N.W.2d 694 (1975). The selection of a site for a public improvement was legislative in nature and was not a contested case. *Stones v. Plattsmouth Airport Authority*, 193 Neb. 552, 228 N.W.2d 129 (1975). Application of two public power districts to Nebraska Power Review Board for approval of an agreement limiting the areas in which and the customers to whom they would furnish electrical energy at wholesale, and opposition thereto by affected cities, was a contested case hereunder. *City of Lincoln v. Nebraska P.P. Dist.*, 191 Neb. 556, 216 N.W.2d 722 (1974). The words contested case are defined by this section. *School Dist. No. 8 v. State Board of Education*, 176 Neb. 722, 127 N.W.2d 458 (1964).

2. Agency subject to act or not. The Administrative Procedure Act does not apply to state agencies without authority to make rules and regulations affecting private rights, private interests, or procedures available to the public. *Hoiengs v. County of Adams*, 245 Neb. 877, 516 N.W.2d 223 (1994). The State Board of Equalization and Assessment is a state agency so as to be subject to the Administrative Procedure Act. *Pentzien, Inc. v. State*, 227 Neb. 434, 418 N.W.2d 546 (1988). The Administrative Procedure Act and its appeal procedures are applicable only to agencies of the state, and not to administrative agencies of municipal government, i.e., the personnel board of the City of Omaha. *Hammann v. City of Omaha*, 227 Neb. 285, 417 N.W.2d 323 (1987); *Harnett v. City of Omaha*, 188 Neb. 449, 197 N.W.2d 375 (1972). The State Racing Commission is an administrative agency as defined in subsection (1) of this section. *B.T. Energy Corp. v. Marcus*, 222 Neb. 207, 382 N.W.2d 616 (1986). The Commission of Industrial Relations is an administrative agency within the purview of the Administrative Procedure Act. *Lincoln Co. Sheriff's Emp. Assn. v. Co. of Lincoln*, 216 Neb. 274, 343 N.W.2d 735 (1984). Appeals taken under the Administrative Procedure Act may only be taken from agencies of the state. The Omaha Housing Authority is not such an agency. *Fisher v. Housing Auth. of City of Omaha*, 214 Neb. 499, 334 N.W.2d 636 (1983). Court of Industrial Relations is an agency within provisions of this section. *School Dist. of Seward Education Assn. v. School Dist. of Seward*, 188 Neb. 772, 199 N.W.2d 752 (1972). This case refers to a district court decision which held that a board of county commissioners is not a state agency under this and related sections. *State ex rel. Southeast Rural Fire P. Dist. v. Grossman*, 188 Neb. 424, 197 N.W.2d 398 (1972). State Board of Equalization and Assessment subject to this act. *County of Gage v. State Board of Equalization & Assessment*, 185 Neb. 749, 178 N.W.2d 759 (1970). The Nebraska Liquor Control Commission is an administrative agency as defined in this section. *The Flamingo, Inc. v. Nebraska Liquor Control Commission*, 185 Neb. 22, 173 N.W.2d 369 (1969). Provisions of this section disclose that act was intended to apply to the State Railway Commission. *Yellow Cab Co. v. Nebraska State Railway Commission*, 175 Neb. 150, 120 N.W.2d 922 (1963).

3. Rules. This section provides a definition of only the term "rule" and does not create any affirmative duties for the Public Service Commission to engage in rulemaking when interpreting a federal statute. *In re Application No. C-1889*, 264 Neb. 167, 647 N.W.2d 45 (2002). Subsection (2) of this section does not limit the definition of "private rights and interests" to those rights and interests that are unrelated to the workplace; if a rule or regulation prescribes a penalty, it is presumed to affect private rights and interests, regardless of whether the rights or interests at stake are those of an agency employee or some other individual. *McAllister v. Nebraska Dept. of Corr. Servs.*, 253 Neb. 910, 573 N.W.2d 143 (1998). To be valid, an administrative rule or regulation must be properly promulgated, approved, and filed. *Haven Home, Inc. v. Department of Pub. Welfare*, 216 Neb. 731, 346 N.W.2d 225 (1984). This act requires Department of Banking to establish procedural rules providing for notice and hearing. *First Fed. Sav. & Loan Assn. v. Department of Banking*, 187 Neb. 562, 192 N.W.2d 736 (1971). Failure of State Board of Vocational Education to promulgate rules pursuant to this section immaterial in situation where hearing and notice not required. *Chaloupka v. Area Vocational Technical School No. 2*, 184 Neb. 196, 165 N.W.2d 719 (1969). Rules of railway commission applied to controversy between railroads and motor carriers. *Ready Mix, Inc. v. Nebraska Railroads*, 181 Neb. 697, 150 N.W.2d 275 (1967). Liquor Control Commission is an administrative agency required to file rules. *Terry Carpenter, Inc. v. Nebraska Liquor Control Commission*, 175 Neb. 26, 120 N.W.2d 374 (1963). Administrative agencies are required to adopt regulations which have the force and effect of a statute. *Farmers Co-op. Elevator Assn. of Big Springs v. Strand*, 382 F.2d 224 (8th Cir. 1967). Rates of carriers are rules which are required to be filed. *Mogis v. Lyman-Richey Sand & Gravel Corp.*, 90 F.Supp. 251 (D. Neb. 1950).

4. Miscellaneous. The Nebraska Quality Jobs Board is not an "agency" subject to the Administrative Procedure Act, and an application to the Nebraska Quality Jobs Board is not a "contested case", within the meaning of this section. *Wasikowski v. Nebraska Quality Jobs Bd.*, 264 Neb. 403, 648 N.W.2d 756 (2002). In an action brought under the Administrative Procedure Act, it is the responsibility of the agency to provide the transcript in a timely fashion. The failure to do so subjects the agency to the disciplinary powers of the court. *James v. Harvey*, 246 Neb. 329, 518 N.W.2d 150 (1994). Neither the Administrative Procedure Act nor the regulations of the Department of Water Resources provide for any time limits on the rights of parties to intervene either as a matter of right or permissively. Nonetheless, the department as an agency of the State of Nebraska must have sufficient latitude in its operation in matters under its jurisdiction to exercise that jurisdiction fairly. *Basin Elec. Power Co-op. v. Little Blue N.R.D.*, 219 Neb. 372, 363 N.W.2d 500 (1985). It does not constitute an improper delegation of authority to permit matters of enforcement, such as the manner and the method, to be left to the reasonable discretion of administrative officers. *State v. Sprague*, 213 Neb. 581, 330 N.W.2d 739 (1983). Where there is a specific statute for an agency, setting out the method and scope of appeal, it should be applied instead of this act. *Duffy v. Physicians Mut. Ins. Co.*, 191 Neb. 233, 214 N.W.2d 471 (1974). There were practical difficulties which prevented a strict application of Administrative Procedure Act to proceedings before the State Board of Equalization and Assessment. *County of Kimball v. State Board of Equalization & Assessment*, 180 Neb. 482, 143 N.W.2d 893 (1966); *County of Blaine v. State Board of Equalization & Assessment*, 180 Neb. 471, 143 N.W.2d 880 (1966). Rate tariffs of telephone companies are excepted from requirements of filing in office of Secretary of State. *City of Scottsbluff v. United Telephone Co. of the West*, 171 Neb. 229, 106 N.W.2d 12 (1960).

84-907.10. Member of the Legislature; complaint; procedure.

(1) After an agency submits a copy of each amendment or rule or regulation pursuant to section 84-907.06, or any time thereafter, any member of the Legislature who feels aggrieved by the amendment, rule, or regulation or believes that the amendment, rule, or regulation is in excess of the statutory authority or jurisdiction of the agency, is unconstitutional, or is inconsistent with the legislative intent of the authorizing statute may file a complaint with the Chairperson of the

Executive Board of the Legislative Council. The complaint shall explain in detail the member's contentions.

(2) The chairperson of the executive board or a committee staff member of the executive board shall refer the complaint to the chairperson of the standing committee of the Legislature which has subject matter jurisdiction over the issue involved in the rule or regulation or which has traditionally handled the issue and, if practicable, to the member of the Legislature who was the primary sponsor of the legislative bill that granted the agency the rulemaking authority if the member is still serving or, if the legislative bill was amended to include the rulemaking authority, to the primary sponsor of the amendment granting rulemaking authority if the member is still serving.

(3) The standing committee and primary sponsor of the legislative bill or amendment granting rulemaking authority may consider the complaint and, if such committee or primary sponsor concludes that the complaint has merit, then such committee or primary sponsor may request a written response from the agency which shall include, but not be limited to (a) a description of the amendment or rule or regulation, (b) when applicable, a description of the legislative intent of the statute granting the agency rulemaking authority and a statement explaining how the amendment or rule or regulation is consistent with legislative intent, (c) if the description required in subdivision (b) of this subsection is inapplicable, an explanation as to why the amendment or rule or regulation is necessary, and (d) an explanation of the extent to which and how any public comment was taken into consideration by the agency with respect to the amendment or rule or regulation. The agency shall respond within sixty days of a request, and such response shall be a public record.

(4) Nothing in this section shall be construed to prohibit the adoption or promulgation of the rule or regulation in accordance with other sections of the Administrative Procedure Act.

Source: Laws 2005, LB 373, § 7. ; Effective date September 4, 2005