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## Public School Board Operations in Nebraska: Passing Motions, Accommodating Public Participation, and Deliberating Quasi-judicial Decisions

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# Public School Board Operations in Nebraska: Passing Motions, Accommodating Public Participation, and Deliberating Quasi-judicial Decisions

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## I. INTRODUCTION

Public school districts in Nebraska are political subdivisions whose existence is authorized by the Nebraska Constitution.<sup>1</sup> They act only with the authority<sup>2</sup> granted to them by the Nebraska Legislature. Each public school board acts as the corporate governing body for the public school district<sup>3</sup> that its members are elected to serve. As such, each school board possesses all of the governmental authority granted by the Legislature<sup>4</sup> to operate its district’s elementary and secondary<sup>5</sup> education programs.

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1. See NEB. CONST. art. VII, § 1.

2. See *id.*

3. See NEB. REV. STAT. § 79-101(1) (Supp. 1999).

4. See State *ex rel.* Shineman v. Board of Educ. School Dist. No. 33, 152 Neb. 644, 42 N.W.2d 168 (1950).

A school board makes many and varied decisions to act (or not to act) in the course of conducting the district's business. These include the approval (and denial) of claims; hiring (and firing) of employees; acquisition (and disposal) of property; adoption, repeal or amendment of board policies; adoption of budgets; setting of school district property tax rates; and many others.<sup>6</sup>

All official action taken by any public school board can be legally accomplished only through the votes of individual school board members, recorded in the official minutes of the board,<sup>7</sup> on a motion made under an appropriate agenda item<sup>8</sup> and as part of an official public<sup>9</sup> meeting of the school board.

The balance of this article will attempt to offer answers to three questions about the conduct of the official meetings of Nebraska's public school boards: (1) How many "aye" votes are required to pass a motion properly before a public school board? (2) How can a public school board accommodate the interests and the rights of members of the public to participate in its meetings? (3) How may a public school board deliberate before issuing its decision following a quasi-judicial hearing to resolve a dispute or claim of an individual employee or other person?

## II. HOW MANY "AYES" ARE ENOUGH?

Each official action taken by a public school board is determined by the votes cast by the individuals who serve on the board. Each vote must be cast for or against a motion made in an open public meeting of the board.

Question: How many affirmative votes does it take to pass a motion?

Answer: As often occurs when we are dealing with the law, the answer is, "it depends." It depends upon the number of members who serve on the board; it depends on the number of board members who are present; it depends on the number of board members who take part in the vote; and, it depends upon the subject matter of the motion being considered.

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5. Note: There are two classes of public school districts that operate elementary-only programs (Class I) and secondary-only programs (Class VI), but this fact has no significant effect on the questions discussed in this article. See NEB. REV. STAT. §§ 79-102 and 79-4,100 to 79-4,104 (Reissue 1996). Sections 79-1201 to 79-1243 of the *Nebraska Revised Statutes* authorizes the existence of "Educational Service Units." The conclusions in this article can also be applied, where appropriate, to the operations of the governing boards these intermediate districts.
  6. See NEB. REV. STAT. chs. 13, 79, 77, and 84.
  7. See NEB. REV. STAT. § 84-1413(2) (Reissue 1999).
  8. See NEB. REV. STAT. § 84-1411(1) (Cum. Supp. 2000).
  9. See NEB. REV. STAT. § 84-1408 (Reissue 1996).

Fortunately, it is possible to determine the correct answer to the question in any particular situation if we know enough about the situation, and if we know the applicable rules of law.

There are two fundamental rules of law which apply any time we want to know how many "ayes" are enough. One is statutory, a result of the legislative process. The other is part of the common law, a result of the judicial process.

The statutory rule is found in section 79-554 of the *Nebraska Revised Statutes*,<sup>10</sup> which declares: "[i]n all meetings of a school board . . . , a majority of members shall constitute a quorum for the transaction of business . . . ."<sup>11</sup>

Class III school districts, which educate most of Nebraska's K-12 students, have either a six-member board or a nine-member board. The smallest "majority" of six is four. Therefore, a six-member board must have at least four members present in order to be able to transact business, that is; to consider and act upon motions properly before it. Similarly, the smallest majority of nine is five. Therefore, a nine-member board must have at least five members present in order to be able to transact business.

The second rule, the "common law rule," was approved by the Nebraska Supreme Court in *Houser v. School District of South Sioux City*.<sup>12</sup> The second rule can be stated as follows: "[i]n the absence of a contrary statutory provision . . . a majority of a quorum which constitutes a simple majority of a collective body may act for that body."<sup>13</sup>

Thus, in the absence of a contrary statutory provision, a six-member board must have no fewer than four members present and no fewer than three affirmative votes (and no more than two negative votes) in order to pass a motion properly before it. The reasoning that supports these conclusions is:

- 1) if there are fewer than four members present, the quorum statute is not satisfied, so no legally effective action is possible;
- 2) if there are fewer than three affirmative votes, the common law rule is not satisfied, so no legally effective action is possible; and,
- 3) if there are more than two negative votes, the motion fails because the greatest possible number of positive votes would be three and "tie" votes do not take action.

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10. This section specifically applies to Class I, II, III and VI school districts. Section 79-562 of the *Nebraska Revised Statutes* applies a similar rule to Class V districts. The statutes appear to contain no specific reference to the quorum for the board of a Class IV district.

11. NEB. REV. STAT. § 79-554 (Reissue 1996).

12. 189 Neb. 323, 202 N.W.2d 621 (1972).

13. *Id.* at 326, 202 N.W.2d at 623.

Similarly, in the absence of a contrary statutory provision, a nine-member board must have no fewer than five members present and no fewer than three affirmative votes in order to pass a motion properly before it. The significance of the number of negative votes depends on the number of members present and voting. The reasoning supporting these conclusions is:

- 1) if there are fewer than five members present, the quorum statute is not satisfied, so no legally effective action is possible;
- 2) if there are fewer than three affirmative votes, the common law rule is not satisfied, so no legally effective action is possible; and,
- 3) if there are more than two negative votes (with only five or six members present and voting), the motion fails.
- 4) if there are more than three negative votes (with only seven or eight members present and voting), the motion fails.
- 5) if there are more than four negative votes (under any circumstances), the motion fails.

The next question is, of course, "What are some of the contrary statutory provisions which might apply to alter the general requirements?" The list below contains several such requirements, most of which can be found in Chapter 79 of the *Nebraska Revised Statutes*.

- A student who has been expelled from any school, public or private, and who has not completed the terms of the expulsion, can be permitted to enroll in a public school in Nebraska only by "a majority vote" of the school board of the district "in which enrollment is sought."<sup>14</sup>
- When a city or village, which contains a Class III district, annexes territory which was within the Class IV or V district, the annexed territory can become part of the Class III district only if "approved by a majority of the members of the school board of the Class IV or V school district and a majority of the members of the school board of the Class III school district within ninety days after the effective date of the annexation ordinance."<sup>15</sup>
- Several kinds of district reorganization or boundary change proposals can be put into effect only after they are approved by a "majority" of the school boards of one or more of the affected districts.<sup>16</sup>
- Special meetings of Class I school districts may be called by a "majority vote" of the district board.<sup>17</sup>

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14. NEB. REV. STAT. § 79-266.01 (Cum. Supp. 1999).

15. NEB. REV. STAT. § 79-473(1) (Cum. Supp. 1998).

16. NEB. REV. STAT. § 79-452, 79-455, 79-458 (Supp. 1999), 79-473 (Cum. Supp. 1998) and 79-476 (Reissue 1996).

17. NEB. REV. STAT. § 79-557 (Supp. 1999).

- Special meetings of the Class V board of education can be called “on petition of a majority of the members” of the board of education.<sup>18</sup>
- “No person shall be declared elected” to the position of employee of the Class IV district “unless he or she receives the vote of a majority of all the members of the board of education.”<sup>19</sup>
- The school board of a Class I, II, III, IV or VI school board “by a majority vote,” can appoint some person other than the secretary of the board to conduct the annual census of residents age twenty-one or under.<sup>20</sup>
- No “money shall be appropriated out of the school fund” of a Class V or Class IV district “except on a recorded affirmative vote of a majority of all the members of the board” of education.<sup>21</sup>
- The purchase of “a school bus or buses for the purpose of providing transportation facilities” from the “general fund of the district” requires “a majority vote of the members of” the school board.<sup>22</sup>
- “A majority of the members of a school board . . . may enter into a contract of employment with a legally qualified teacher or administrator.”<sup>23</sup>
- “No person shall be declared elected” to the position of administrator of a school district “unless he or she receives the vote of a majority of all the members of the board” of education.<sup>24</sup>
- “The contract of any certificated employee . . . may be canceled or amended by a majority of the members of the school board during the school year” for any of the reasons enumerated in the statute.<sup>25</sup>
- The “school board” may amend or terminate “[t]he contract of a permanent certificated employee” by a “vote of the majority of its members” for (1) “just cause,” (2) “reduction in force,” (3) failure to “accept employment” or (4) loss of state certification.<sup>26</sup>
- A final decision by a “majority of the members of the school board” is one of the requirements of a “formal due process hearing for the purpose of sections 79-827 and 79-829.”<sup>27</sup>

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18. NEB. REV. STAT. § 79-561 (Reissue 1996).

19. NEB. REV. STAT. § 79-566 (Reissue 1996).

20. NEB. REV. STAT. § 79-578 (Supp. 1999).

21. NEB. REV. STAT. §§ 79-584; 79-597 (Reissue 1996).

22. NEB. REV. STAT. § 79-601 (Reissue 1996).

23. NEB. REV. STAT. § 79-818 (Supp. 1999).

24. NEB. REV. STAT. § 79-822 (Reissue 1996).

25. NEB. REV. STAT. § 79-827(1) (Reissue 1996).

26. NEB. REV. STAT. § 79-829 (Reissue 1996).

27. NEB. REV. STAT. § 79-832(1), (3) (Reissue 1996).

- If a "hearing" involving the question of the nonrenewal of "a probationary certificated" employee's contract is held "before a committee of the school board consisting of not less than three" members, "the final determination" shall be "made by a majority" of the board."<sup>28</sup>
- "The contracts of the teaching staff and school nurses employed by" certain education programs shall require "the sanction of a majority of the members of the governing board." "[Such contract] shall be deemed renewed and in force and effect until a majority of the governing board votes . . . sixty days before the close of the contract period, to amend or terminate the contract for just cause."<sup>29</sup>
- A public school district may exceed the general fund budget of expenditures adopted for the immediately preceding school fiscal year only by a majority of legal votes.
- A public school district may exceed by an additional one percent the applicable allowable growth percentage prescribed in section 79-1026 only by "an affirmative vote of at least 75 percent of the [school] board."<sup>30</sup>
- A "majority of the members of the school board . . . in any school district" may require the county treasurer to distribute to the district school funds "at least once each month."<sup>31</sup>
- Any school board or educational service unit board can initiate a petition to change educational service unit boundaries "by a majority vote" of the board.<sup>32</sup>
- If the hearing involving the question of the nonrenewal of "a probationary certificated" employee's contract with an educational service unit is held "before a committee" of the board, "the final determination" shall be "made by a majority of the members of the board."<sup>33</sup>
- The educational service unit board may amend or terminate "a permanent certificated employee's contract" by a "vote of the majority of its members" for (1) "just cause," (2) "reduction in force," (3) a change in "leave of absence" policy, (4) failure "to accept employment," or (5) legal loss certification.<sup>34</sup>
- A "majority of the remaining members of the board" can excuse a board member's absence "from the district for a continuous period of sixty days" or an absence "from more than two consec-

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28. NEB. REV. STAT. § 79-835 (Reissue 1996).

29. NEB. REV. STAT. § 79-843 (Reissue 1996).

30. NEB. REV. STAT. § 79-1029(1) (Reissue 1996).

31. NEB. REV. STAT. § 79-1041 (Reissue 1996).

32. NEB. REV. STAT. § 79-1207 (Cum. Supp. 1998).

33. NEB. REV. STAT. § 79-1238(5) (Reissue 1996).

34. NEB. REV. STAT. § 79-1239(1) (Reissue 1996).

utive regular meetings of the board” and thus avoid the involuntary statutory vacancy of that member’s position on the board.<sup>35</sup>

### III. ACCOMMODATING THE PUBLIC’S “RIGHT” TO “PARTICIPATE” AT A MEETING OF THE SCHOOL BOARD

Questions can arise concerning whether and how a school board should deal with the desire of patrons and others from outside the school system to “participate” in a meeting of the school board.

Although there are other methods by which a board gathers input from the public’s perspective of its schools, the way in which the board makes itself accessible during its own meetings can mean the difference between a broad base of supporters and a crowd of suspicious taxpayers.

But the question remains, how far should a school board go in a public meeting to accommodate its constituents’ concerns? As with many such questions, part of the answer can be found in the state statutes.

The Public Meetings Act<sup>36</sup> was originally adopted by the Nebraska Legislature in 1975. Citizens have the statutory right to attend, record,<sup>37</sup> and speak<sup>38</sup> at the meetings of school boards and other public bodies.

It is unlikely that attendance or recording is a source of controversy at the meetings of most school boards, since the statute is unequivocal on these two points. However, the provisions concerning the right to speak are less clear and are the subject of numerous inquiries made by school officials to their legal advisors. Section 84-1412 of the *Nebraska Revised Statutes* declares:

[T]he public shall have the right to . . . speak at meetings of public bodies . . . Any public body [may] make and enforce reasonable rules and regulations regarding the conduct of persons attending . . . its meetings. A body [is not] required to allow citizens to speak at each meeting, [nor may it] forbid public participation at all meetings.<sup>39</sup>

The statute seems to create a sort of teeter-totter rule by which (1) the public gets to “speak;” but (2) the board can “regulate” that speech; but (3) the board cannot forbid speech; but (4) the board need not accommodate all desires to speak at all meetings.

What follows is a set of suggestions for successfully conducting the business of the board at an orderly public meeting, while accommodating the rights of those in attendance who might wish to speak.

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35. NEB. REV. STAT. § 32-570(1) (Cum. Supp. 2000).

36. NEB. REV. STAT. §§ 84-1408 to 84-1414 (Reissue 1999).

37. See NEB. REV. STAT. § 84-1412(1) (Reissue 1996).

38. See *id.*

39. NEB. REV. STAT. § 84-1412 (Reissue 1999).

Consider these three categories of agenda items:

- Board hearings
- Citizen comment periods
- Requested agenda items

If a school board has policies and procedures for each of the items listed above, and if those policies and procedures are closely and consistently followed by the board and the administration, two things will usually result. First, the public's need to speak at board meetings can be satisfied consistent with the applicable statutes. Second, the board can conduct orderly, professional and business-like meetings.

### **A. Board Hearings**

Policies and procedures for the conduct of board meetings should contain provisions for the holding of public hearings in connection with "legislative" matters to be determined ultimately by the board.

Note that the hearings described here do not include personnel hearings, such as teacher termination hearings, or student discipline hearings. All such hearings are quasi-judicial in nature and do not involve public participation even when conducted as part of an open meeting.

Board hearings which involve public participation, in the form of testimony, can be held in connection with the board's consideration of specific actions. These might involve the adoption of a new policy, the establishment (or abandonment) of a certain method of organization within the school system, a decision to build a new high school, or the adoption of a budget.

Such hearings can be conducted in a fashion similar to legislative committee hearings or hearings held by the State Board of Education when it considers the adoption or recommendation of an administrative rule. The agenda of the meeting should identify the time and subject of the hearing. At the appropriate time, the presiding officer can recess the meeting and call the hearing to order.

Reasonable time limits on individual testimony should be consistent with the number of witnesses and the time period for the hearing.

### **B. Public Comment Periods**

Boards can reduce some uncertainty of *Nebraska Revised Statutes* Section 84-1412 by including in the agenda of every (or every other, or every third) meeting an item which might be called the "Citizen Comment Period." Although boards are not legally bound to schedule this portion of an agenda at a particular frequency, making these sessions a regular part of the agenda will give the board an air of "accessibility."

A comment period can also help to avoid the uncomfortable position of having to refuse a well-meaning citizen an opportunity to speak who decided to attend a board meeting on what turned out to be the “wrong night.”

The idea of encouraging public comment might seem frightening at first blush, with visions of people coming to the meeting in order to expound upon the meaning of life, or any other topic that they can sink an education-related hook into. Although these types of people may indeed arrive, the impact of their presence can be minimized by setting and enforcing a firm, but reasonable, set of ground rules which allows everyone a chance to speak, but no one a chance to filibuster. The ground rules should address the following:

- Subjects for comment should involve areas over which the school board has domain. Discussion on unrelated matters should be discouraged by the policy and the presiding officer.
- Issues which board policy requires be handled by administrators should likewise be discouraged;
- Time limits should be strictly enforced and the available time should be split equally among those wanting to comment;
- Board members should not engage in exchanges with those making comments.

At the close of the presentation, the presiding officer should thank the presenters and move directly to the next agenda item. Any official action to be considered by the board in response to the presentation should be dealt with only under an appropriate separate published agenda<sup>40</sup> item of its own. Under most non-emergency situations, such agenda items will be part of a later meeting<sup>41</sup> of the school board.

### C. Agenda Items

Each public school board should have a policy and procedures by which members of the public can “get on the agenda” of an official meeting of the board. Rules similar to those for the public comment period should apply and should be made part of the policy, including subject limitations, time limitations, and limitations on board member participation.

Furthermore, the applicable policy should outline the specific procedure to be followed, including a deadline prior to the meeting sufficient to allow the item to be properly added to the official agenda.

For school board members who have not experienced a large crowd of patrons at a board meeting, these procedures may appear to be a waste of time. But when an issue catches the imagination of a com-

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40. See NEB. REV. STAT. § 84-1411(1) (Cum. Supp. 2000).

41. See *id.*

munity, school board members will be pleased to have a pre-established means by which the board can be made accessible to these concerns without being expected to take action in a knee-jerk fashion.

The benefits of a structured process in addressing the board include a perception that the board cares what the public has to say. It will also establish a public record of the board's attempt to satisfy its statutory duty to accommodate the public's "right" to participate in the meetings of the school board.<sup>42</sup> Furthermore, it is possible that comments made by members of the public will, from time to time, contain an idea or a piece of information which the board will find useful.

#### IV. SCHOOL BOARD DELIBERATIONS IN FORMULATING QUASI-JUDICIAL DECISIONS

Following the adoption of the Nebraska's Public Meetings Act<sup>43</sup> in 1975, it was not at all clear that a governing board of a political subdivision in Nebraska could deliberate privately, like a jury, to formulate its decision following a quasi-judicial hearing conducted before the board. For a public school board, quasi-judicial hearings most often involve either certificated employees (teachers or administrators) or students.

A certificated employee can request a hearing under the "continuing contract" laws<sup>44</sup> concerning actions involving certain disciplinary and continuation of employment decisions. Such decisions can include (1) the cancellation of an employment contract of any certificated employee during its term,<sup>45</sup> (2) the nonrenewal of the contract of a probationary ("nontenured") certificated employee at the end of a term (usually a school year),<sup>46</sup> (3) the termination of the contract of a permanent ("tenured") certificated employee at the end of a term,<sup>47</sup> and (4) the unilateral amendment of the contract of any certificated employee effective at the beginning of a new term.<sup>48</sup>

A student (or the student's parent or guardian) can request a hearing under the "student discipline" laws<sup>49</sup> concerning a proposal to punish alleged violations of rules of student behavior by imposition of certain penalties involving the mandatory reassignment, the suspension or the expulsion of the student.

For twenty-five years the uncertainty remained unresolved, until a probationary teacher, disappointed by her school board's decision to

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42. See NEB. REV. STAT. § 84-1412(1) (Reissue 1996).

43. NEB. REV. STAT. §§ 84-1408 to 84-1414 (Reissue 1999).

44. See NEB. REV. STAT. §§ 79-824 to 79-842 (Reissue 1996).

45. See NEB. REV. STAT. § 79-827 (Reissue 1996).

46. See NEB. REV. STAT. § 79-828 (Reissue 1996).

47. See NEB. REV. STAT. § 79-829 (Reissue 1996).

48. See *id.*

49. See NEB. REV. STAT. §§ 79-254 to 79-296 (Reissue 1996).

end her employment following a quasi-judicial hearing (held during a public meeting), decided to sue the board.<sup>50</sup> Technically, she sued in state court to challenge the decision not to renew her contract as a probationary teacher following the 1996-97 school year. The teacher, Rene McQuinn, claimed that the proceedings which led to the nonrenewal of her contract were conducted in violation of state statutes governing public meetings.<sup>51</sup> Following a judgment by the district court in favor of the school district, the teacher appealed the decision to the Supreme Court of Nebraska.<sup>52</sup>

Under Nebraska law, a public school teacher is considered a "probationary certificated employee" during the first three years of employment by a school district.<sup>53</sup> The purpose of the probationary period is to allow the employer an opportunity to evaluate, assess, and assist the employee's professional skills and work performance prior to the employee obtaining permanent status.

The contract of a probationary certificated employee remains in full force and effect unless amended or not renewed in accordance with statutory procedures.<sup>54</sup> A teacher who remains employed by the school district after serving the probationary period is considered to be a "permanent certificated employee."<sup>55</sup>

At the beginning of the 1994-95 school year, the teacher was employed by the district as a probationary certificated employee to teach at one of the district's middle schools.<sup>56</sup> "She remained employed by the district during the 1995-96 and 1996-97 school years . . . . On March 26, 1997, the [elementary school's principal] notified the teacher by letter that he would not be recommending the renewal of her teaching contract for the 1997-98 school year, citing problems with classroom management."<sup>57</sup>

On April 1, McQuinn received a letter from the assistant superintendent which stated that, based on the principal's recommendation, McQuinn's "probationary position with the District was 'under consideration for termination' at the close of the 1996-97 school year."<sup>58</sup> Additional notice was sent to McQuinn on April 8, which "reiterated that McQuinn's contract was being considered for termination and notified

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50. See *McQuinn v. Douglas County Sch. Dist. No. 66*, 259 Neb. 720, 612 N.W.2d 198 (2000).

51. See NEB. REV. STAT. §§ 84-1408 to 84-1414 (Reissue 1999).

52. See *McQuinn*, 259 Neb. at 720, 612 N.W.2d at 198.

53. NEB. REV. STAT. § 79-824(3) (Reissue 1996).

54. See NEB. REV. STAT. § 79-828(1) (Reissue 1996).

55. NEB. REV. STAT. § 79-824(5) (Reissue 1996).

56. See *McQuinn*, 259 Neb. at 721, 612 N.W.2d at 200.

57. *Id.* at 721-22, 612 N.W.2d at 200-01.

58. *Id.* at 722, 612 N.W.2d at 201.

her of her right to request a hearing before the Board. McQuinn exercised this right in a letter to Perkins dated April 12, 1997.<sup>59</sup>

An informal hearing regarding the nonrenewal of McQuinn's contract was held before the Board on May 6, 1997. Both McQuinn and the District were represented by counsel. At the beginning of the hearing, the presiding member of the Board inquired of McQuinn whether she preferred the proceeding to continue in open or closed session. McQuinn responded that she preferred an open session. . . .

[The principal] recommended that McQuinn's contract not be renewed based on his classroom observations and evaluations of her classroom management during the 1996-97 school year. . . . McQuinn testified that [the principal] never told her during the 1996-97 school year that her control over her students was inadequate or that her classroom management skills were otherwise deficient. She believed that classroom management was listed as an area for growth on each of the three evaluations performed by [the principal] during the 1996-97 school year because that was an area in which all teachers should strive to continuously improve. She stated that [the principal] did tell her to improve her technology skills and that she had taken steps in that direction. McQuinn claimed that [the principal] never warned her during the 1996-97 school year that her job was in jeopardy due to her problems with classroom management.

After the parties presented closing arguments, the Board announced that it would conduct its deliberations in a private room, to which neither McQuinn nor the District objected. The Board later returned to open session and announced it was recessing its deliberations "to obtain legal counsel on the options available to the Board. We would hope to be able to work out an agreement with Mrs. McQuinn and the District for a waiver of tenure and continuation of a probationary status and assignment to another school." Thereafter, the parties agreed in writing to extend the deadline for a hearing and for final action by the school board to June 15, 1997, as permitted by [statute].<sup>60</sup>

#### Following this hearing:

On May 30, 1997, the Board published notice in "The Daily Record of Omaha" of the agenda for its regular meeting to be held on June 2, and simultaneously made available the agenda for the June 2 meeting at the board of education offices. At the bottom of the agenda was the following heading: "IX. Executive Session - Personnel Issue (RE: Rene J. McQuinn)."

Neither McQuinn nor her attorney was present when the Board met on June 2, 1997. At the conclusion of its regular business, the Board went into executive session "to discuss a personnel issue dealing with Rene J. McQuinn." After its deliberations, the Board returned to open session and voted in favor of nonrenewal of McQuinn's contract. In a letter dated June 3, 1997, [the district] notified McQuinn that the board had voted at its June 2 meeting not to renew her teaching contract for the 1997-98 school year.<sup>61</sup>

In her appeal to the district court, the teacher alleged that the school board "violated her due process rights by failing to conduct its deliberations in open session pursuant to her request" and the provi-

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59. *Id.*

60. *Id.* at 722-23, 612 N.W.2d at 201.

61. *Id.* at 724, 612 N.W. at 202.

sions of the teacher tenure and termination statutes and the public meetings statutes.<sup>62</sup>

The district court affirmed the board's actions, finding that the teacher was serving under a probationary teaching contract, "that she was properly notified that her contract would not be renewed, and that the teacher requested a hearing and said hearing was held."<sup>63</sup>

The court concluded by finding that the hearing on May 6 was an informal hearing pursuant to the tenure statutes and, except for deliberations, was held in open session pursuant to the public meeting statutes.<sup>64</sup> "The court held that McQuinn's due process rights were not violated and further found that '[t]he statute only requires that the formal action for non-renewal be held in open session.'<sup>65</sup> The teacher appealed the lower court's ruling.

The standard of review to be applied by the courts in reviewing a school board's order terminating the employment contract of a probationary certificated employee is "whether the school board acted within its jurisdiction and whether there is sufficient evidence as a matter of law to support its decision."<sup>66</sup> Such evidence is "sufficient as a matter of law" if a judge could not, were the trial to a jury, direct a verdict.

The Nebraska Supreme Court observed that the state's tenure and termination statutes clearly authorize a school board to elect not to renew a probationary certificated employee's contract. A school board that exercises this authority acts within its jurisdiction and the only question to be decided by a court is whether the evidence is sufficient as a matter of law to support its decision.<sup>67</sup>

Based upon a review of the record, the court concluded that there was sufficient evidence as a matter of law to establish compliance by the district with the observation and evaluation procedures required by the tenure and termination statutes.<sup>68</sup>

The teacher argued that, by deliberating in closed session following the hearing, the school board violated both statutes governing informal hearings involving the nonrenewal of a probationary certificated employee's contract, and public meetings laws.<sup>69</sup>

The court ruled that a probationary teacher who receives notice that the school district will consider whether to renew his or her con-

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62. *Id.*

63. *Id.* at 724, 612 N.W.2d at 202.

64. *See id.* at 724-25, 612 N.W.2d at 202.

65. *Id.*

66. *Id.* at 725, 612 N.W.2d at 203.

67. *See id.* at 726, 612 N.W.2d at 203.

68. *See id.* at 728, 612 N.W.2d at 205.

69. *See id.* at 729, 612 N.W.2d at 205.

tract may request a hearing before the school board. Such a hearing is governed by section 79-834, which declares:

Hearings involving the question of the nonrenewal of a probationary certificated employee's contract or the nonrenewal of a superintendent shall not be due process hearings and shall not be required to meet the requirements of section 79-832 but shall be informal hearings at which the probationary certificated employee or superintendent, or his or her representative, shall be afforded the opportunity to discuss and explain his or her position with regard to continued employment, to present information, and to ask questions of those appearing on behalf of the school district. Such hearings shall be held in closed session at the request of the certificated employee or superintendent, or his or her representative, and upon affirmative vote of a majority of the school board members present and voting, but the formal action of the school board for nonrenewal shall be in open session.<sup>70</sup>

"The school board honored McQuinn's expressed preference for an open hearing, but at the conclusion of the hearing, the board announced that it would deliberate privately in another room and the teacher did not object."<sup>71</sup> The court concluded that

[it could not] construe § 79-834 or any statute dealing specifically with the subject of a school district's nonrenewal of a probationary employee's contract to require that a school board deliberate in open session following an open hearing.

The deliberations occur after the hearing is concluded. There is no specific statutory requirement that the deliberations occur on the same day as the hearing, as reflected by the fact that pursuant to § 79-831, hearings must be held within 30 days of the date of request, but the deadline for final action by the school board is May 15. As the district court correctly concluded, all the statute requires is that "formal action for non-renewal be held in open session." . . . . We therefore turn to McQuinn's contention that the school board's private deliberations on May 6, 1997, violated Nebraska's public meetings laws.<sup>72</sup>

The court observed that section 79-554 provides that "[a]ll meetings of [a school board or board of education] shall be subject to sections 84-1408 to 84-1414" which compose Nebraska's public meeting laws.<sup>73</sup> The intent of the public meeting laws appears at section 84-1408, which provides:

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret. Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and sections 79-317, 84-1408 to 84-1414, and 85-104.<sup>74</sup>

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70. *Id.* at 730, 612 N.W.2d at 205.

71. *Id.*

72. *See id.* at 730, 612 N.W.2d at 205-06 (citations omitted).

73. *Id.* at 731, 612 N.W.2d at 206 (citing NEB. REV. STAT. §§ 84-1408 to 84-1414 (Reissue 1996)).

74. *Id.*

The school board acted in conformity with the public meeting laws "by going into executive session to discuss the issue of McQuinn's continued employment and then returning to open session for a motion and vote with respect to the nonrenewal of the contract."<sup>75</sup> Thus, a public school board which has conducted a quasi-judicial nonrenewal hearing for a probationary teacher may, like a jury, conduct its deliberations in a closed session so long as it issues its decision by board action in a public session.<sup>76</sup>

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75. *Id.* at 733, 612 N.W.2d at 207.

76. *See id.*