

## ADMINISTRATIVE LAW

### SUPREME COURT REVIEW

In two cases decided during the survey period, the Nebraska Supreme Court affirmed decisions of the Court of Industrial Relations.<sup>1</sup> Both cases involved a school board appealing from an order affecting salary and other terms and conditions of employment of its teachers.

#### DELEGATION OF LEGISLATIVE POWER CONSTITUTIONAL

In one of these cases<sup>2</sup> the appealing school board challenged the constitutionality of the statutory provision authorizing the Court of Industrial Relations to make orders affecting wages and conditions of employment.<sup>3</sup> The contention was that there were not sufficiently definite guidelines for this delegation of legislative power to an administrative body.<sup>4</sup> The statute requires the Court of Industrial Relations to establish rates of pay and conditions of employment comparable to those of workers with like skills under similar working conditions, taking into consideration *total* compensation, *i.e.*, vacation, sick leave, insurance and pension benefits, etc., as well as wages.<sup>5</sup> These guidelines were found sufficiently definite and clear to uphold the legislature's delegation of power to affect wages and conditions of employment to the Court of Industrial Relations.<sup>6</sup>

#### NON-RETROACTIVITY OF ORDERS OF THE COURT OF INDUSTRIAL RELATIONS CLARIFIED

One of the statutory provisions governing the Court of Industrial Relations states that none of its orders shall be retroactive.<sup>7</sup>

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1. Crete Educ. Assn. v. School Dist. of Crete, 193 Neb. 245, 226 N.W.2d 752 (1975); Orleans Educ. Assn. v. School Dist. of Orleans, 193 Neb. 675, — N.W.2d — (1975).

2. Orleans Educ. Assn. v. School Dist. of Orleans, 193 Neb. 675, — N.W.2d — (1975).

3. NEB. REV. STAT. § 48-818 (Reissue 1974).

4. 193 Neb. at 682, — N.W.2d at —.

5. NEB. REV. STAT. § 48-818 (Reissue 1974).

6. 193 Neb. at 685, — N.W.2d at —.

7. NEB. REV. STAT. § 48-817 (Reissue 1974).

The appealing school board in this case<sup>8</sup> contended that this meant that orders of the Court of Industrial Relations could not be effective back to the date of the filing of the original petition.<sup>9</sup> The Nebraska Supreme Court, however, interpreted the statute as meaning that such orders could have effect back to the origin of the dispute, *i.e.*, the original date of filing of the petition with the Court of Industrial Relations.<sup>10</sup> Thus, an order entered by the Court of Industrial Relations on February 28, 1974 could adjust the teacher's salary scale for the 1972-73 school year, since the action had been commenced in March of 1972.<sup>11</sup>

## LEGISLATION

In the area of Administrative Law the Unicameral, during its 1975 session made various minor changes. The most significant appears to regard the publication and distribution of the rules and regulations of the multitude of state agencies. All agency rules and regulations are to be distributed as a set to the state library and every county library. All amendments to the rules and regulations are also to be distributed to the libraries and to any interested persons.<sup>1</sup> The legislative committee to which all agency rules are referred for review and for possible recommendations as to repealing or modifying the enabling legislation of the particular agency<sup>2</sup> will hereinafter be referred to as the Legislature's Committee on Administrative Agency Rules and Regulations. The committee will consist of nine members of the legislature to be elected by the Unicameral.<sup>3</sup>

The statutes regulating the Material Division of Administrative Services<sup>4</sup> governing all transactions for the procurement of per-

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8. *Crete Educ. Assn. v. School Dist. of Crete*, 193 Neb. 245, 226 N.W.2d 752 (1975).

9. *Id.* at 249, 226 N.W.2d at 756.

10. *Id.* at 249-51, 226 N.W.2d at 756-57.

11. *Id.* at 247-51, 226 N.W.2d at 754-57.

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1. L.B. 267, [1975] Laws of Neb. 512. Private individuals will be required to purchase the sets of rules and regulations and their amendments at a price to cover the costs of printing, handling and mailing.

2. NEB. REV. STAT. § 84-904 (Cum. Supp. 1974).

3. L.B. 316, § 1, [1975] Laws of Neb. 639.

4. NEB. REV. STAT. §§ 81-145 to -163.01 (Reissue 1971).

sonal property [articles]<sup>5</sup> and real property [property]<sup>6</sup> were amended by L.B. 359.<sup>7</sup> These statutes shall also apply to a leasing agreement of property outside the state capitol by the state or any one of its agencies.<sup>8</sup> The Material Division has been delegated the power to accept trade-ins when it is advantageous, to purchase items without competitive bidding if the price has been established by the Federal General Service Administration, and to enter into lease agreements of personal property.<sup>9</sup> State agencies may now purchase miscellaneous needs directly without prior Material Division approval so long as the purchase does not exceed a cost of thirty-five dollars.<sup>10</sup> The factors for determining competitive bids for all purchases, leases or contracts were altered by adding two factors to be taken into any consideration: (1) the life-cost of the article or property, and (2) the performance of the article or property.<sup>11</sup> These amendments have given the Material Division a greater control over state governmental contracts, with greater consideration to be given to cost analysis.

The powers of the State Building Administrator have been increased. All rental agreements for office space must now be approved by him and the Director of Administrative Services.<sup>12</sup> However, the Department of Administrative Services is the sole and final authority for approval of all leases of real property by state agencies,<sup>13</sup> and it promulgates any rules and regulations necessary to implement economical and efficient leasing procedures.<sup>14</sup>

The State Racing Commission has been given the power to delegate to the Board of Stewards such of its powers and duties as the Commission feels are necessary to carry out the purposes of regulation of the horse racing industry in Nebraska.<sup>15</sup> Any decisions or actions taken by the Stewards under any delegation of power are appealable to the Commission.<sup>16</sup>

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5. L.B. 359, § 3(2), [1975] Laws of Neb. 728-29.

6. *Id.*, § 3(4), at 729.

7. L.B. 359, [1975] Laws of Neb. 727.

8. *Id.*, § 4(2), at 729. Lease and contract are defined to mean an agreement entered into by the state or one of its agencies with another party where the state will receive the title to or use of articles or property furnished by the other party in exchange for some consideration. *Id.*, § 3(5), at 729.

9. L.B. 447, § 3, [1975] Laws of Neb. 902-03.

10. *Id.*, § 5, at 904.

11. L.B. 359, § 8, [1975] Laws of Neb. 731-32.

12. *Id.*, § 13, at 734.

13. *Id.*, § 15(2), at 736.

14. *Id.*, § 15(3), at 737.

15. L.B. 582, [1975] Laws of Neb. 1160.

16. *Id.* The Commission may also initiate, on its own motion, a review of the actions of the Board of Stewards. *Id.*

Aid to disaster areas and disaster relief generally are important aspects of both state and federal administrative functions. The tornadoes which struck Omaha, Nebraska, accentuated the necessity for quick and decisive action in these matters. During its 1975 Session the Unicameral enacted L.B. 612,<sup>17</sup> enlarging the duties and programs of various state bodies in the field of disaster relief. The Director of Public Welfare was given the authority to coordinate, with the assistance of the Adjutant General and the state civil defense agency, all programs to meet disaster-related expenses and the needs of individuals or families affected by a major disaster.<sup>18</sup> The Governor's Emergency Fund was especially earmarked for use for disaster-related relief where matching funds are necessary to procure applicable assistance programming from state or federal agencies.<sup>19</sup> Added to the services for which these funds may be expended was the clearance or removal of water, debris, or wreckage from both publicly or privately owned land when the public health and safety are threatened.<sup>20</sup> The authority of the Governor following his proclamation that a disaster emergency exists shall include the power to purchase or lease housing units for the victims, to assist in the acquisition of sites for these housing units, to provide for temporary housing with the discretion to suspend all health, safety, zoning and other laws and regulations for a maximum of sixty days in order to procure such temporary housing.<sup>21</sup> The Governor may also apply for federal loans to assist local governmental entities to pay the costs of rebuilding.<sup>22</sup> Regulations will be promulgated by the Adjutant General to regulate distribution of funds to individuals. The standards for eligibility, the procedures and methods of application and the determinations of grants will be set up by the Adjutant General.<sup>23</sup> The Unicameral has made it a punishable offense for any person to fraudulently or willfully misstate any facts in connection with an application for financial assistance.<sup>24</sup> The Unicameral, through L.B. 612, has attempted to better coordinate state programs with federal assistance plans and has enhanced the powers of the Governor and the State Civil Defense Agency to better deal with sudden and tragic natural disasters.

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17. L.B. 612, [1975] Laws of Neb. 1376.

18. *Id.*, § 1(7), at 1377.

19. *Id.*, § 2(3), at 1377-78.

20. *Id.*, § 2(5)(n), at 1379.

21. *Id.*, § 4, at 1381. Political subdivisions were also given the authority to acquire temporary housing. *Id.*, § 5, at 1381-82.

22. *Id.*, § 6, at 1382.

23. *Id.*, § 7, at 1382-83.

24. *Id.*