

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 883

Introduced by Harr, 8.

Read first time January 08, 2018

Committee:

1 A BILL FOR AN ACT relating to the Attorney General; to amend sections
2 81-2009 and 84-205, Reissue Revised Statutes of Nebraska; to change
3 the powers and duties of the Attorney General; to provide the
4 Attorney General authority to appoint independent counsel in cases
5 of crimes by state employees or officials; to provide powers for
6 such independent counsel; and to repeal the original sections.

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

1 Section 1. In the case of a state official or employee who is
2 suspected of committing a crime or when the Attorney General has an
3 actual or perceived personal or ethical conflict in the prosecution of an
4 alleged crime, the Attorney General may request the appointment of
5 independent counsel to appear for and investigate and prosecute such
6 action. The request shall be made to the district court in any county
7 where the crime was alleged to have been committed. The independent
8 counsel shall have the same powers and prerogatives as the Attorney
9 General and in each of the several counties as a county attorney. The
10 independent counsel is authorized to employ such assistance and incur
11 such expenses as shall be necessary in any such action. Such expenses
12 shall be paid from the budget of the Attorney General. The independent
13 counsel shall be independent of and not act under the authority or
14 direction of the Attorney General.

15 Sec. 2. Section 81-2009, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 81-2009 (1) The Attorney General, or a member of his staff, or a
18 practicing attorney designated by the Attorney General:

19 (a) Shall ~~shall~~ defend all civil and ~~criminal~~ actions instituted
20 against the superintendent or any subordinate officer or employee of the
21 Nebraska State Patrol arising from an alleged act or omission in the
22 course and scope of his or her ~~their~~ employment, subject to section
23 81-8,239.06; and -

24 (b) May defend any criminal action instituted against the
25 superintendent or any subordinate officer or employee of the Nebraska
26 State Patrol arising from an alleged act or omission in the course and
27 scope of his or her employment.

28 (2) The superintendent shall provide not less than three agency
29 legal counsels stationed with the Nebraska State Patrol to assist county
30 attorneys in the preparation of cases involving drug abuse and to advise
31 the patrol on all legal matters.

1 Sec. 3. Section 84-205, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 84-205 The duties of the Attorney General shall be:

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

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

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

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

21 (5)(a) (5) At the request of the Governor, head of any executive
22 department, Secretary of State, State Treasurer, Auditor of Public
23 Accounts, Board of Educational Lands and Funds, State Department of
24 Education, or Public Service Commission;

25 (i) To ~~to~~ prosecute any official bond or any contract in which the
26 state is interested which is deposited with any of them; ~~and~~

27 (ii) Subject to sections 81-8,239.06 and 81-2009, ~~to~~ prosecute or
28 defend for the state all civil ~~or criminal~~ actions and proceedings
29 relating to any matter connected with any of such officers' departments
30 if, after investigation, he or she is convinced there is sufficient legal
31 merit to justify the proceeding; ~~and~~ ~~-~~

1 (iii) Subject to section 81-2009 and section 1 of this act, to
2 prosecute or defend for the state all criminal actions and proceedings
3 relating to any matter connected with any of such officers' departments
4 if, after investigation, he or she is convinced there is sufficient legal
5 merit to justify the proceeding.

6 (b) Such officers shall not pay or contract to pay from the funds of
7 the state any money for special attorneys or counselors-at-law unless the
8 employment of such special counsel is made upon the written authorization
9 of the Governor or the Attorney General;

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

13 (7) To prepare, when requested by the Governor, Secretary of State,
14 State Treasurer, or Auditor of Public Accounts or any other executive
15 department, proper drafts for contracts, forms, or other writings which
16 may be wanted for the use of the state and report to the Legislature,
17 whenever requested, upon any business pertaining to the duties of his or
18 her office. The report submitted to the Legislature shall be submitted
19 electronically;

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

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

27 (10) To appear for the state and prosecute and defend all civil or
28 criminal actions and proceedings in the Court of Appeals or Supreme Court
29 in which the state is interested or a party. When requested by the
30 Governor or the Legislature, the Attorney General shall appear for the
31 state and prosecute or defend any action or conduct any investigation in

1 which the state is interested or a party before any court, officer,
2 board, tribunal, or commission;

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

7 (12) To include within the budget of the office sufficient funding
8 to assure oversight and representation of the State of Nebraska for
9 district court appeals of administrative license revocation proceedings
10 under section 60-498.04; and

11 (13) To create a Child Protection Division to be staffed by at least
12 three assistant attorneys general who each have five or more years of
13 experience in the prosecution or defense of felonies or misdemeanors,
14 including two years in the prosecution or defense of crimes against
15 children. Upon the written request of a county attorney, the division
16 shall provide consultation and advise and assist in the preparation of
17 the trial of any case involving a crime against a child, including, but
18 not limited to, the following offenses:

19 (a) Murder as defined in sections 28-303 and 28-304;

20 (b) Manslaughter as defined in section 28-305;

21 (c) Kidnapping as defined in section 28-313;

22 (d) False imprisonment as defined in sections 28-314 and 28-315;

23 (e) Child abuse as defined in section 28-707;

24 (f) Pandering as defined in section 28-802;

25 (g) Debauching a minor as defined in section 28-805; and

26 (h) Offenses listed in sections 28-813, 28-813.01, and 28-1463.03.

27 Any offense listed in subdivisions (a) through (h) of this
28 subdivision shall include all inchoate offenses pursuant to the Nebraska
29 Criminal Code and compounding a felony pursuant to section 28-301. Such
30 crimes shall not include matters involving dependent and neglected
31 children, infraction violations, custody, parenting time, visitation, or

1 other access matters, or child support. If the county attorney declines
2 in writing to prosecute a case involving a crime against a child because
3 of an ethical consideration, including the presence or appearance of a
4 conflict of interest, or for any other reason, the division shall, upon
5 the receipt of a written request of the county attorney, the Department
6 of Health and Human Services, the minor child, the parents of the minor
7 child, or any other interested party, investigate the matter and either
8 decline to prosecute the matter or initiate the appropriate criminal
9 proceedings in a court of proper jurisdiction.

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

12 Sec. 4. Original sections 81-2009 and 84-205, Reissue Revised
13 Statutes of Nebraska, are repealed.