

*Thirty-Fourth
Annual Report
of the
Nebraska
Public Counsel*

**THE
OMBUDSMAN**



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TABLE OF CONTENTS

Mission Statement.....	3
Transmittal.....	5
Forward.....	6
The Ombudsman Concept.....	8
Information and Referral.....	11
History of the Office.....	12
Staff.....	15
Complaint Summaries.....	17
Statistical Analysis.....	28
Appendix.....	38
Bibliography.....	43

NEBRASKA PUBLIC COUNSEL'S OFFICE

MISSION STATEMENT

TO PROMOTE ACCOUNTABILITY IN PUBLIC ADMINISTRATION AND PROVIDE CITIZENS WITH AN INFORMAL MEANS FOR THE INVESTIGATION AND RESOLUTION OF THEIR COMPLAINTS AGAINST THE ADMINISTRATIVE AGENCIES OF NEBRASKA STATE GOVERNMENT.

EXPOSITION

- The Public Counsel's Office is a public accountability and problem-solving agency. Its fundamental purposes are to promote accountability by state agencies and to investigate, address and resolve, through informal means, citizens' complaints relating to the administrative acts of state agencies.
- The "administrative acts" that may be addressed by the Public Counsel's Office include any action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an agency of state government.
- In addressing citizen complaints, the emphasis is always on the need for informality in resolving the disputes between citizens and agencies. Because of this emphasis on informality, some of the work of the Public Counsel's Office takes on the appearance of being in the nature of mediation or conciliation. However, the Public Counsel's Office is interested in more than simply resolving disputes and must, particularly in its public accountability role, carry out serious fact-finding. In order to perform this fact-finding, the Public Counsel's Office has been given very real investigative powers, including the subpoena power.

- The approach to each citizen's complaint is tailored to its particular facts, but the Public Counsel's Office always addresses complaints impartially, and does not approach cases from an initial perspective of acting as an advocate for the complainant. In fact, many complaints are found to be unjustified by the Public Counsel's Office precisely because the results of a neutral investigation show that the complaint is not sustained by the facts. On the other hand, once it has been determined from an investigation that a complaint is justified, it is the duty of the Public Counsel's Office to approach the relevant administrative agency with recommendations for corrective action. In pursuing these recommendations, the Public Counsel's Office takes on the role of an advocate, not for the complainant, but for the corrective action and, in a very real sense, for the general improvement of public administration.
- Because of its interest in improving public administration, the Public Counsel's Office is not necessarily satisfied with the outcome of a case merely because the complainant may be satisfied. The Public Counsel's Office also has to consider the broader implications of a case for the administrative system and, where appropriate, make recommendations for changes that will strengthen agency policies and procedures. By performing this function, and by publishing occasional reports of its findings and recommendations, the Public Counsel's Office also helps to promote public accountability of the agencies of state government and performs a legislative oversight function.

TRANSMITTAL

Section 81-8,251, R.R.S. 1943, provides that the Public Counsel shall each year report to the Clerk of the Legislature and to the Governor concerning the exercise of the functions of the office during the preceding calendar year. Pursuant to Section 81-8,251, this Thirty-second Annual Report of the Nebraska Public Counsel/Ombudsman has been prepared as the Annual Report for the calendar year 2004 and is hereby respectfully submitted.

FORWARD

This the *Thirty-fourth Annual Report* of the Nebraska Public Counsel's Office, which covers the activities of the office during calendar year 2004. For the second consecutive year, we are choosing to publish the *Annual Report* of the Nebraska Public Counsel's Office in a limited form, using the internet to make the document widely accessible, and printing a relatively small number of the document in paper and ink form. It is our current plan to continue to follow this pattern for the foreseeable future.

It was in our 2002 Annual Report that we first discussed the question of the utility of the institution of the ombudsman's annual report, and wondered about the cost-efficiency of continuing to print and distribute hundreds of "hard copies" of a document that had a very limited readership. With those points in mind, in 2003 we decided to "publish" the Public Counsel's *Annual Report* using the internet. The Annual Report was placed on the Public Counsel's segment of the Nebraska Legislature's web site, and less than one hundred hard copies of the report were actually printed. Those few printed copies were deemed an unavoidable necessity, since some "real" copies of the report were needed for distribution to state officials and to be used in response to the rare cases where parties specifically asked for a print and ink copy of the document. That approach to publication seemed to work, and was certainly a much cheaper alternative, and so we are going to do the same thing in 2004 and beyond.

In the case of the 2003 Annual Report, we also made some changes in the content of the report, particularly by deleting the sections that we had traditionally included which provided samples of cases that the Public Counsel's Office had handled during the year. We dispensed with the samples cases, because we felt that we had reached the point where the descriptions (and the related cases) were repetitive, and did not add anything substantial to the basic understanding of the ombudsman institution. After providing countless detailed descriptions of our work in *Annual Reports* over the years, we felt that we had exhausted the usefulness of the sample case as a source of insight into the institution, and that we had reached the point where we were merely engaging in repetition for its own sake.

As an alternative to the lengthy case descriptions offered in earlier *Annual Reports*, in this report for 2004 we will be including "complaint summaries," which are found beginning on page 17 of the report. These summaries are, in effect, the raw

or unrefined version of selected complaints as they were presented to the Public Counsel's Office by the complaining party. These summaries are provided without any explanation of the follow-up steps taken by the Public Counsel's Office, and without reference to the outcome of the case, on the assumption that they will give the reader a "flavor" for the kinds of situations that are presented to the office on a daily basis. While these raw complaint summaries may be of very limited usefulness to other ombudsman professionals who read this report, we felt that their inclusion in the Annual Report we justified as a way to help introduce the "uninitiated" reader to the work of an ombudsman's office.

Marshall Lux, Ombudsman

THE OMBUDSMAN CONCEPT

Throughout much of the last century, countries around the world, in general, and Americans, in particular, have witnessed a dramatic growth in the scope of government. The modern bureaucratic state, with its extended supervisory functions and its increased provision of services, has become an unavoidable reality. As a natural concomitant of that reality, the organization and operation of government has become more sophisticated, and more complex, as government has endeavored to perform its expanded role in an efficient, evenhanded, and procedurally reasonable manner. A common result of this increased complexity in government is the utter bewilderment that many citizens experience when confronted by the intricate, and seemingly infinite, array of rules, regulations, policies, and procedures that they encounter in their dealings with the bureaucracy of modern government. Thus, as government's involvement in the lives of its citizens has become more frequent, direct, and thorough, citizen interaction with that government has simultaneously become more complicated and, for many, far more frustrating.

As might be expected, these combined characteristics of modern government tend to generate a wide assortment of grievances in cases where citizens feel, rightly or wrongly, that their government has treated them in a manner that is unreasonable, unfair, or improper. While some of those grievances are ultimately resolved through the sole efforts of the complaining party, many grievances are left unresolved, either because there is no avenue for a ready solution, or because the grievant simply lacks the resources and sophistication necessary to utilize those avenues that do exist. When such grievances are left unresolved, citizens become more alienated from their government, and the errors of governmental operatives are left unaddressed and are, perhaps, even reinforced.

In order to help a bewildered public deal with the backlog of unresolved citizen grievances against governmental bureaucracy, numerous governments around the world have turned to the Swedish innovation of the ombudsman. Although the specific characteristics of the institution may differ in certain respects from one government to another, the basic concept of an ombudsman's office envisions an independent office that is designed to receive, investigate, and pursue informal resolution of miscellaneous citizen complaints relating to agencies of government. In carrying out this function, the ombudsman is not only expected to resolve the specific substantive complaints that come to the office, but the ombudsman is also

expected to promote improvements in the quality of government by advocating for changes in the ongoing management and operation of the agencies under the ombudsman's jurisdiction. It is also anticipated that the ombudsman, in performing these functions, will help to hold powerful governmental agencies publicly accountable for their actions.

In its classic form, an ombudsman, although an independent officer, is viewed as being an adjunct of the legislative branch of government. Indeed, one of the reasons that the ombudsman's office in its classic form is made a part of the legislative branch is to help insulate the ombudsman from pressures that the office might experience if it were placed within the executive branch of government. Because of its association with the legislative branch of government, the classic ombudsman is also able to perform a role as part of the apparatus for legislative oversight of governmental agencies and programs. In fact, the work of the ombudsman in resolving the problems that are experienced by ordinary citizens at the hands of governmental agencies gives the ombudsman a unique insight into the real world activities and consequences of those agencies and programs. That insight may then be used as a resource by the legislature in carrying out its oversight responsibilities with respect to the agencies within the ombudsman's jurisdiction.

Typically, the investigatory powers given to an ombudsman's office under the law are very real, and very meaningful. In arguing for the resolution of citizens' complaints, and in advocating for fundamental changes in the policies and procedures of administrative agencies, the "truth," as revealed to the ombudsman by a thorough investigation, is the most potent weapon that an ombudsman can wield. Indeed, without the power to thoroughly investigate the facts surrounding citizens' complaints, an ombudsman's office would be crippled in its efforts to understand and resolve those grievances. In addition to its investigatory authority, an ombudsman's office also has very broad power to make recommendations to the agencies under its jurisdiction, and to publish its findings and conclusions relative to the grievances that it investigates. However, the typical ombudsman's office does not have the authority to compel an administrative agency to accept and implement its conclusions and recommendations. Thus, in its formal relationship with the agencies under its jurisdiction, an ombudsman's office performs solely an advisory role. Nevertheless, it is widely recognized that an ombudsman's office, by providing a direct and informal avenue for the mediation of citizen grievances, is a valuable tool for enhancing the relationship between a government and its citizens and, ultimately, for improving the administration of government itself.

The ombudsman institution made its first appearance in North American government in the 1960's. In his ground breaking books *When Americans Complain* and *Ombudsmen and Others*, Professor Walter Gellhorn of Columbia University promoted the ombudsman concept as a means of providing an "external critic of administration" for American government. In 1967, Professor Gellhorn prepared a "Model Ombudsman Statute" and in 1969 the American Bar Association adopted a resolution which articulated the twelve essential characteristics of an ombudsman for government. The ABA followed this effort with the development of its own Model Ombudsman Act, which it adopted in 1971. From these beginnings, the ombudsman institution gradually spread to state and local governments across the United States.

INFORMATION AND REFERRAL

In addition to performing its specific statutory mandate regarding the resolution of citizen complaints, the Office of the Public Counsel has assumed the additional function of responding to citizen requests for general information relative to government. In this day of complex bureaucratic structures and imponderable regulatory provisions, it is not unusual for citizens to be confused or simply "lost" in their dealings with government. The Office of the Public Counsel is frequently contacted by citizens with questions regarding the provision of governmental services, the content of specific laws and regulations and a variety of miscellaneous issues relating to government in general.

Historically, the Office of the Public Counsel has responded to such inquiries either by providing the information sought directly or by referring the citizens involved to the organizations or governmental entities that would be best equipped to provide the information sought. The Office of the Public Counsel, with its broad expertise in the organization and operation of government, particularly on the state level, has proven to be ideally suited to serve as a clearinghouse for citizen inquiries pertaining to government. Over the years, thousands of citizens have contacted the Office of the Public Counsel and have received the information necessary to enable them to better understand and interact with their government.

HISTORY OF THE OFFICE

On July 22, 1969, the Nebraska Legislature passed LB 521, providing for the establishment of the Office of the Public Counsel. LB 521 was approved by Governor Norbert T. Tiemann, on July 29, 1969. (See Appendix.) The Office commenced actual operation on June 1, 1971, with the appointment of Mr. Murrell B. McNeil to the position of Public Counsel.

In creating the Office of the Public Counsel, the Nebraska Legislature established an office that was, in all significant respects, consistent with the classic model of an ombudsman's office as articulated in the American Bar Association's Resolution setting forth the twelve essential characteristics of an ombudsman for government. The new law contemplated that the Public Counsel would be an independent officer, appointed by the Legislature for a term of six years and subject to removal, for good cause, only by a vote of 2/3 of the members of the Legislature. In order to facilitate its efforts to resolve citizen complaints, the Office of the Public Counsel was endowed with very thorough investigatory powers, including the authority to address questions to officers and employees of state agencies, free access to agency records and facilities, and the subpoena power. The Office of the Public Counsel was further empowered to publish its findings and conclusions relative to citizen complaints and to make recommendations to the agencies under its jurisdiction. The Office was also authorized to participate, on its own motion, in general studies and inquiries not relating to specific citizen complaints. The jurisdiction of the Office of the Public Counsel was limited to scrutiny of the administrative agencies of the state government. The Office was not given jurisdiction over complaints relating to the courts, to the Legislature or to the Governor and her personal staff. Most significantly, the Office of the Public Counsel was not given jurisdiction over political subdivisions of the State.

After serving for over nine years as Nebraska's Public Counsel, Murrell McNeil retired from office, effective July 31, 1980. Upon Mr. McNeil's retirement, Mr. Marshall Lux, then the Deputy Public Counsel, became the Acting Public Counsel, by operation of law. On February 19, 1981, the Executive Board of the Legislative Council nominated Mr. Lux for appointment to the position of Public Counsel, pursuant to Section 81-8,241, R.R.S. 1943. That nomination was approved by the Nebraska Legislature on February 20, 1981. The Legislature reappointed Mr. Lux to successive terms in 1987, 1993, and 1999.

Throughout its history, the Public Counsel's Office has been the subject of legislative initiatives that have refined and extended the scope of the office's role in Nebraska government. The first of these developments was seen in 1976, as policy-makers around the country were searching for new ways to reform the corrections system in the wake of the Attica riots. The Nebraska Legislature responded to that situation in part by amending the Public Counsel Act to create the new position of the Deputy Public Counsel (Ombudsman) for Corrections. In creating this new position, the Legislature was, in effect, saying that it wanted to give special emphasis to resolving prison complaints and to have someone on the Legislature's staff who could act as an expert in that area. It was anticipated that this new position would not only offer inmates an effective avenue for obtaining administrative justice and the redress of grievances, but that it would also serve the interests of the state by helping to reduce sources of anger and frustration that led to inmate violence, and by decreasing the number of inmate lawsuits relating to prison conditions and operation. The current Deputy Public Counsel for Corrections is Mr. Oscar Harriott.

A significant issue before the Nebraska Legislature in 1989 was concerned with demands by Native Americans, particularly the Pawnee Tribe, that the Nebraska State Historical Society repatriate to the tribes those human remains and artifacts that archaeologists had recovered over the decades from Native American burial sites. The Legislature met these demands by adopting the Nebraska Unmarked Human Burial Sites and Skeletal Remains Protection Act, which established procedures that allowed the tribes to seek the repatriation of human remains and burial goods that were being held in the collections of the Historical Society and other museums across the state. The Ombudsman's Office was given an important role in this procedure by being designated by the Legislature as the body responsible to arbitrate any dispute that arose between the tribes and the museums in the repatriation process. The Ombudsman's Office was actually called upon to perform this arbitration role on two occasions in disputes between the Pawnee Tribe and the Historical Society.

In 1993, in an effort to find new ways to encourage efficiency and discourage misconduct in state government, the Nebraska Legislature passed the State Government Effectiveness Act. Among other things, the Act contemplated that the Ombudsman's Office would become a focal point for the investigation of allegations of significant wrongdoing in state agencies. The Act also provided for a new procedure designed to protect state employees who acted as whistleblowers

to disclose wrongdoing in state government from being retaliated against by their supervisors. The Ombudsman's Office was given the key role in investigating and responding to these retaliation complaints and has, over the last several years, addressed a number of such cases. Early in 1997, the Nebraska Supreme Court found one important provision of the Act to be unconstitutional under the theory that it was a violation of the principle of separation of powers. *State ex rel. Shepherd v. Nebraska Equal Opportunity Commission*, 251 Neb. 517, 557 N.W.2d 684 (1997). Those constitutional objections, as well as several other perceived difficulties with the functioning of the Act, were addressed by the Nebraska Legislature in LB 15 of 1997, which was signed by the Governor on March 10, 1997.

One of the most important issues before the Nebraska Legislature in 1994 was an initiative to restructure the state's system for the delivery of welfare services. In the process of changing this system, it was recognized that the recipients of welfare services would need to have a special problem-solver to help in dealing with the redesigned welfare system. It was also recognized that the Legislature itself would benefit from having the input and expertise of a staff person who was directly involved in addressing the day-to-day problems that arose in the implementation of the new welfare system. Responding to these needs in much the same way that it had in 1976, the Legislature created the new position of Deputy Public Counsel for Welfare Services as a part of the legislation that ultimately enacted the changes to the state's welfare system. The current Deputy Public Counsel for Welfare Services is Ms. Marilyn McNabb.

STAFF

The chief asset of the Public Counsel's Office is not its statutory powers or mandate. It is not even the high level of support that the Office receives from the public and the Legislature, although those factors are certainly important to the Public Counsel's success. The chief asset of the Public Counsel's Office is its staff, the men and women who carry out the routine duties of the Office.

The staff of the Office of the Public Counsel consists of eight full-time and three part-time employees, and one very loyal and helpful volunteer. All of the seven full-time staff members (Ombudsman Marshall Lux, Deputy Public Counsel Terry Ford, Deputy Public Counsel for Corrections Oscar Harriott, Deputy Public Counsel for Welfare Services Marilyn McNabb, and Assistant Public Counsels James Davis III, Carl Eskridge, Anna Hopkins, and Hong Pham) are actively involved in casework. The part-time employees (Sharon Holtgrewe, Marge Green, and Kris Stevenson) serve as clerical personnel and have significant contact with the public in fielding telephone calls and providing immediate responses to questions from citizens.

It is, of course, always difficult to conveniently describe or characterize any group of people, even a group as small as the staff of the Nebraska Public Counsel's Office. The people who make up that staff are, after all, individuals, who bring diverse backgrounds and a wide range of unique talents to their jobs. Many of the professional employees of the Public Counsel's Office came to the office with previous experience in state government. Some had worked first in the office as volunteers before becoming permanent professional employees of the office. Three of the professionals in the office have law degrees, and some on the professional staff have advanced degrees in other areas as well. All of these backgrounds and associated talents contribute in important ways to the success of the Public Counsel's Office. Viewed collectively, however, the most important characteristic of the staff of the Public Counsel's Office is its experience.

While the details of their backgrounds are remarkably diverse, one characteristic that many of the Public Counsel's Office staff have in common is their experience in working for other agencies of Nebraska state government. Nearly every member of the Public Counsel's Office professional staff had prior experience working in Nebraska state government before joining the Public Counsel's Office. In some cases, that prior experience was extensive. The entire staff of the Public

Counsel's Office has an average of over sixteen years of service with the State of Nebraska. This wide range of experience both in and out of the Public Counsel's Office has given the staff a meaningful exposure to the day-to-day functioning of state government and the issues that are common to its operation and have made the staff a true collection of professionals in the handling of complaints against state administrative agencies.

Beyond its experience in state government generally, the staff of the Public Counsel's Office has the additional advantage of continuity. The rate of turnover of the Public Counsel's staff is very low, even for such a relatively small office. The average Public Counsel's Office employee has been with the office for more than twelve years. This means that the employees of the Public Counsel's Office are not only experienced in the minutia of state government, but that they are also highly experienced in the fine art of complaint-handling. They have refined the needed human skills for dealing with people under stress. They have developed the analytical skills for untangling complicated issues presented in complaints. They have acquired the negotiation skills necessary for bringing citizens and bureaucrats together for the resolution of difficult problems.

Dealing effectively with citizen complaints requires an uncommon combination of talents and expertise. The professional training and background of the Public Counsel's staff is both diverse and extensive. That background together with the uncommon continuity of the staff has enabled the Public Counsel's Office to develop and maintain a strong foundation in what can truly be described as the profession of complaint handling.

COMPLAINT SUMMARIES

The following summaries are offered as thumbnail descriptions of the kind, and variety, of routine complaints that were presented Public Counsel 's Office in 2004.

Department of Health and Human Services

Case #145

The complainant is a Regional Center patient. He telephoned the Public Counsel's Office saying he has recently been diagnosed as having prostate cancer. He is scheduled for surgery Friday. The complainant said that the surgery would be at Mary Lanning Memorial Hospital. The complainant said that a Regional Center nurse has advised him that he is to be discharged from the Regional Center for the surgery, and will then recommitted to the Regional Center afterward. The complainant believes that this is being done in order that the State would not be responsible for the cost of the surgery. He wanted the Public Counsel's Office to check on the facility's intentions.

Case #716

The complainant states that her three children were recently taken from her by the Omaha Police Department, and by Child Protective Services of the Department of Health and Human Services. The complainant said that this happened after her violent ex-husband gave officials false information that she was using drugs. Now, the complainant has been told that the Douglas County Housing Authority also wants to take her home away from her. She believes that, if this happens, then she will never be able to get her children back. She wants help from the state to prevent the Housing Authority from evicting her, and wants the help of the Public Counsel's Office in getting her children back.

Case #1077

The complainant said that her eight-year-old daughter is in the custody of the state, and was put in a foster placement in the home of the complainant's brother and his wife. The complainant said that she was court-ordered to have visitation and other contact with her daughter, but the Department of Health and Human Services caseworker, and the guardian have ignored the court orders for visitation, telephone calls, etc. She added that her brother threatens her about the child, as well. She believes they should follow the court's directions regarding contact with her daughter, and is hopeful that the Public Counsel's Office might be able to help.

Case #1140

The complainant states that he is in dire need of help. Although he is finally receiving food stamps, he has not qualified for any other assistance, and is now living on the streets, until he is approved for SSI benefits. He states that he has a brain tumor, which made him lose his job, and then his home and possessions. He said that he has talked to the Department of Health and Human Services caseworker and submitted the requested paperwork, but it seems that the Department misplaces his paperwork. The complainant said that he is unsure if there is anything else we can do for him, but the Public Counsel's Office had helped him to get the food stamps, and now he needs more help.

Case #1359

The complainant said that she has a very painful knee condition which needs to have surgery. This is a chronic condition, and she is facing the third time that she will need surgery for the condition. Not only is her knee condition very painful, but it gives out on her repeatedly. The complainant said that she has just learned that she has been terminated from Medicaid. She does not believe she is above the income guidelines, as was mentioned in the notice of the termination of her benefits. The complainant said that she does not feel that her Department of Health and Human Services caseworker has done anything to help her, and she would like the Public Counsel's Office to look into the situation, to see what might be done to help her get the operation performed.

Case #2185

The complainant called concerning her family's efforts to get a furnace for their house. It is December, and she said that they are currently heating their home using the oven. The complainant said that her husband is a paraplegic, and she has a serious spinal condition. According to the complainant, they are buying their house on a land contract. The complainant said that, since they are buying their house on a land contract, it is not registered with the Register of Deeds Office, so their request has been turned down. The caseworker with the Department of Health and Human Services told them that the State could not help them with this problem, so she called the Public Counsel's Office.

Department of Motor Vehicles

Case #583

The complainant had been in contact with the Department of Motor Vehicles and had learned that that the number of points assessed against his driver's license for a traffic ticket from two years ago had been entered incorrectly by the Department. The complainant said that the Department had entered his traffic offense as an assessment of three points, when under the law it should have been an assessment of two points. Now, that extra point is causing him to have his driver's license suspended. The complainant said that he has had no luck with finding anyone in the Department of Motor Vehicles to help with this situation, and he was referred by the Department to the Public Counsel's Office for assistance.

Case #620

The complainant says that he is trying to get his Nebraska driver's license restored, but cannot because the Oklahoma Department of Motor Vehicles claims that he has an Oklahoma traffic citation from 1990 that has not been paid or resolved. The complainant states that he does not know about a traffic citation in Oklahoma in 1990, and that he has been sending letters to the Oklahoma Department of Motor Vehicles asking for information to

explain the supposed citation. He said that his letters to Oklahoma are not being responded to, and the Nebraska Department of Motor Vehicles will not help. He is hopeful the Public Counsel's Office may be able to help to resolve this situation.

Case # 1426

The complainant said that she recently misplaced her driver's license, and so she went to the Department of Motor Vehicles to obtain a duplicate. She said that, although she had been issued a duplicate licenser previously, in this case she was having problems, because she could not provide documentation adequate to convince the Department of Motor Vehicles of her identity. Although there is a long list of the sort of documentation that the Department of Motor Vehicles accepts for this purpose, many of the categories of documentation are not applicable to the complainant. Some of the documentation that is available to her is not useful in this situation, because it is missing a link from her maiden name to her current married name. The complainant is hoping that the Public Counsel's Office can help her with this situation.

Department of Correctional Services

Case #1073

The complainants are parents of a Penitentiary inmate who is very sick with Hepatitis C. They would like the Public Counsel's help in getting their son released from custody, so that he is able to die at home with them. Their son is currently in the Penitentiary hospital, and not expected to live much longer. He was eligible to be paroled in January of 2000, but is still there. Their son contracted Hepatitis C while in prison, but was not treated for it for five years. The family's state Senator had suggested that they contact the Public Counsel's office for help.

Case #1094

The complainant is an older inmate at the state Diagnostic and Evaluation Center, who has made a request for a special diet and wants very much to have his request honored by the staff of the facility. The complainant explains that he has an almost deathly allergic reaction to mushrooms and, even though he is told they are not served very often, he counted one week when they were served some five times during regular meals. The staff has told him he is getting enough other food on his tray to supply adequate nutrition, but he explains that he has no teeth, so he is not able to eat things like raw celery and carrot sticks. He says that, because he is limited in what he can eat, he now gets by on just a tiny bit of food every day. He is asking staff to provide him with a special diet, and is hoping the Public Counsel's Office can help with getting a favorable response to that request.

Case #1573

The complainant said that his elderly, 81-year-old father has been coming to the Penitentiary for many years to visit him, but recently he tested positive on the machine that the facility uses to "sniff" visitors for trace of illegal drugs on their clothing or person. The complainant says neither he, nor his father, have ever touched illegal drugs. He says that this situation has been very stressful for his father, who has not been in the greatest of health. The complainant also mentions that his father fell recently, and was given pain medication as a result. His father has been taking medicine prescribed by the Veterans Administration, as well. The complainant said that he believes that these medications are at fault for the positive reading on the machine. He would like this concern looked into, so that his father's visiting status can be restored. The complainant also feels that visitors should be warned that their medications might result in a positive reading on the machine.

Case #2262

The complainant states that his problem started in 2003, when his shoulder was injured while working in the Penitentiary kitchen. The complainant said that he believes that he had tendon and ligament damage, and that he did not receive the correct medical treatment at that time for the injury. The complainant continues to have problems with that shoulder and arm, and

believes this will have an effect on his ability to perform work when he is released into the community.

Case #2200

Complainant is an inmate at the Nebraska Correctional Center for Women. She does not believe that she can finish the institutional substance abuse treatment program in time for her possible scheduled court date, which will determine whether she and her husband will be able to retain their parental rights to their three children. The complainant states she is already one and one-half months behind in the substance abuse program, due to unexpected cancellation of classes.

Department of Revenue

Case # 256

A Catholic monsignor wrote to the Public Counsel's Office stating that the Catholic churches of a particular Nebraska diocese has been requesting Certificates of Sales Tax Exemption for all of the Catholic churches in their diocese. They have turned in the information that has been requested by the Department of Revenue, but that as of this date they have not received the certificates. Last year, the Public Counsel's Office helped in getting these certificates for three of the churches in the diocese, but not all of them. This year the monsignor would like the Public Counsel's help in getting the certificates for all of the Catholic churches in the diocese.

Case #509

An accountant called the Public Counsel's Office on behalf of a client who is not getting fair treatment from the Department of Revenue. The accountant said that she used to be a tax auditor, and so she knows how the process is suppose to go, but that in this case the Department of Revenue is not doing what they are suppose to do. The accountant said that her client wants to settle with the state on the question of back taxes due, but the Department of Revenue has totally ignored their overtures. Eventually, the

Department has said they would think it over, but instead of communicating that they were not going to accept the settlement, they just wrote a letter setting a hearing. The accountant and her client are very frustrated with the situation, and wonder whether the Public Counsel's Office can get the Department to take their settlement offers more seriously.

Case #2240

The complainants, a husband and wife, state that they do not feel that they are being treated fairly by the Department of Revenue. The complainants are involved in a dispute with the Department over back taxes due, and say that they have been denied information and copies of determinations and assessments. The complainants say that they have also been denied the right to examine the evidence against them, and the right to present evidence defending themselves. The complainants claim that, under duress, they were made to sign a document that allowed the Department of Revenue to take money out of their bank account, even though they can prove that they do not owe the state any money. The complainants feel that the Department of Revenue is in direct violation of the taxpayer's bill of rights in this case, and are wondering whether there anything the Public Counsel's Office can do to help them.

Game and Parks Commission

Case #560

The complainant claims that he is aware of an individual who lives in his area who is illegally wild birds, such as any raptors and wild turkeys, but nothing is being done about it, because the person in question is a close friend of the local Game and Parks Warden. The complainant says that he has been complaining for some time about the antics of this person, but nothing is ever done. In one instance, he said that he complained in August and a warning ticket was finally given to the offending party, but not until October. The complainant also believes that the paperwork concerning the action taken against this individual should be a matter of public record, but he cannot get any information on what was done with regard to the taking of several turkeys on private land by this person. He said that he was told that

the individual in question supposedly has a permit to do some of this hunting, and he would also like to see this permit, to find out more about it.

Case #1597

The complainant's family was planning a big family reunion and had gone to the Game and Parks Commission to reserve a particular campsite at Branched Oak Lake for the week of September 1 through 5. They said that they dropped off a check, dated September 1, to reserve the site. However, when the family showed up at the site on Saturday, September 4, the site was taken by another family. They complained first to a Supervisor at the park, and later spoke to another Game and Parks Commission official. They said that they were given inconsistent answers to their questions about the mix-up over the reservation of the site. They complained on September 7 by email to the Director of the Game and Parks Commission, but have gotten no response thus far.

Department of Roads

Case # 338

The complainant had been voicing concerns about the Department of Roads district in a certain part of the state. The complainant said that there are some Hispanics working on the Department's crews in that area, and there are a lot of racist remarks that are made towards those workers. The complainant hoped that the Public Counsel's Office could get the top administrators in the Department of Roads to take action on the fowl language and the racist remarks being made. The caller wanted to remain anonymous.

Department of Insurance

Case #58

The complainant said that he had filed a complaint against Allstate Insurance Company with the Nebraska Department of Insurance. After hearing back from the Department about the results of its investigation, the complainant was still dissatisfied. The complainant then wrote to the Department and asked for a copy of the letter of response that the agency had received from Allstate. The Department has refused to give him a copy. The complainant wonders whether the Public Counsel's Office can help him to see the insurance company's response to his complaint.

State Patrol

Case #236

The complainant, very frustrated, asked the Public Counsel's Office to help him with a problem which has caused him to lose job opportunities for some ten year. He said he has been labeled a felon by the State of Nebraska, but that, in fact, he is not a convicted felon, although that is what Nebraska records reflect. The complainant said that he did not know that this record even existed until rather recently, but it suddenly makes sense to him why he was turned down for jobs that he had applied for in the past. The complainant said that he said he had gotten into typical teenage behavior back in the early 1990's, but was only given a short sentence for shoplifting (petty larceny), was not convicted of anything else. Another court case was in 1994 when he was also a misdemeanor, and he says that neither of these two cases should not qualify him as a convicted felon. The complainant is seeking the Public Counsel's assistance in correcting this record, so that he can move on with his life.

Department of Education

Case #295

The complainant is a client of Vocational Rehabilitation Services and he said that his caseworker has told him today that his Vocational Rehabilitation benefits are going to be cut, and that they are not going to assist in job placement. The complainant is Hispanic and said that he feels that Hispanic people are unfairly treated by the agency. The complainant said that he knows white people who are rude in their communications with the staff of Vocational Rehabilitation, but they still seem to get the benefits that they want. However, if a Hispanic client working with the agency objects too often, or has some concerns, then they are treated much differently. The complainant said the Vocational Rehabilitation staff decide what they are going to do for the clients, and the clients have no way to defend themselves. He would like to have the help of the Public Counsel's Office in dealing with Vocational Rehabilitation.

Case #406

The complainant said that he was disabled, and is a client of Vocational Rehabilitation Services. He said that he recently needed a new faucet in his bathroom, and he asked for help from Vocational Rehabilitation's Assistive Technology Partnership division. When they came to review the situation, they noticed that he needed other bathroom repairs as well, and so they told him to get bids for the job, which he did. A contractor was chosen for the job, but the complainant did not feel that the bidding process was done quite right. The complainant said that the repair turned out terrible, with very shoddy workmanship that made the bathroom look worse when they were done. The complainant said that he then called Vocational Rehabilitation Services to complain, and emphasized that he did not want that particular contractor back to do the job of fixing the problems. The complainant said that Vocational Rehabilitation told him that if he did not let that contractor do the work, then he would have to pay for all the repairs himself. The complainant does not think that this is fair, and would like the Public Counsel's Office to help with the case.

Department of Labor

Case #416

The complainant told the Public Counsel's Office that he is 46 years old, and that he has been unemployed since September 2, 2003. He said and has held only two jobs during his working career so far, but has fallen on some very difficult times due to bad health, and being diagnosed with diabetes. He explained that the Unemployment Compensation Division of the Department of Labor requires that proof of active job searches to be called in to the Division on Sunday nights, but they will not accept cell phone calls. He is going out on job searches, and wants to call them in, but twice now, the old, broken telephone that he uses will not work, and his car was not working, so he could not get in to the Unemployment office on the Monday to report his recent job searches. Consequently, he has lost out on two unemployment compensation checks. The complainant said that he is terribly in debt, using up all his savings, and he believes he will soon lose his home. Utilities have been shut off, and his roommate, he said, left him with all sorts of balances to pay. He said that he uses his credit card to pay his bills, and is several thousands of dollars in debt to them. He wondered if the Public Counsel's Office could help him in his efforts to cooperate with the Unemployment office.

It is emphasized that the complaints that have been described in this section can be appropriately characterized as being routine cases of the Office of the Public Counsel. Many of the complaint cases worked on by the Public Counsel's Office in 2004 were similar, in many respects, to those which are described here. On the other hand, many other complaint cases that were handled by the Office of the Public Counsel in the last year were substantially different in subject matter, and some presented issues that were more complex, requiring elaborate investigative efforts.

STATISTICAL ANALYSIS

The following tables illustrate the size, nature, and distribution of the caseload of the Nebraska Public Counsel's Office for 2004. The total caseload recorded by the Public Counsel's Office in calendar year 2004 was 2,290 cases, a total which is almost identical to the Public Counsel's caseload recorded in 2003 (2,291 cases). The 2004 caseload total for the Public Counsel's Office was remarkable not only for the fact that it was so close to the total from the year before, but also because it marked the continuation of a pattern that has persisted (with an aberration in 2002) since 1999.

The Public Counsel's caseload totals for the years 1999 through 2001, and 2003, were remarkably consistent, with caseloads of 2,224 cases in 1999, 2,206 cases in 2000, 2,202 cases in 2001, and 2,291 cases in 2003. Now the caseload total of 2,290 for 2004 can be added to what has become a clear pattern of between 2,200 and 2,300 cases annually. The single exception to this pattern over the last six years was seen in 2002, when the Public Counsel's Office had a caseload total of almost 2,500 cases. We have, of course, remarked in the past on the fact that much of the elevated caseload seen by the Public Counsel's Office in 2002 was the product of complaints that were connected with the implementation of the state's new system for administering the distribution of child support payments, a special circumstance which had generated a definite spike in complaints that had not been experienced by the Public Counsel's Office in other years. We predicted, correctly as it happened, that the high caseload total of 2002 would not continue in the years immediately following. Indeed, the expectation was that, in the immediate future, the Public Counsel's Office would see a return to the 2,200 annual caseload range of the years 1999 through 2001. That is exactly what has happened in 2003 and 2004. In effect, what the Public Counsel's Office has seen is that its annual caseload totals have reached a clearly identifiable plateau at a level that is between 2,200 and 2,300 cases per year.

Over the thirty plus years of its existence, the Public Counsel's Office has seen other identifiable plateaus in its caseload totals. As a general rule, however, the Public Counsel's caseload that has generally been characterized by consistent growth in its annual caseload throughout most of the last two decades of its history. The dramatic growth in the Public Counsel's annual caseload is perhaps best reflected by the observation that the caseload of the Office went from a total of 1,008 cases in 1983, to the plateau of 2,200-plus cases, seen in the last six years, an

increase of more than 120% in the total number of cases handled by the Public Counsel annually.

In our Annual Reports for 2001, 2002, and 2003, we made special note of a development regarding the percentage of the complaints received by the Public Counsel's Office in those years that were deemed by the office to be justified in whole or in part. (This is a figure which can be calculated by comparing the year's statistics for the total number of cases deemed "justified" or "partially justified," as reflected in Table 2, with the total number of the "logged complaints," less the "pending complaints," and the two categories of non-jurisdictional complaints.) In 2002, we recorded that approximately 58% of the cases handled by the office in that year had been deemed to be justified or partially justified. This percentage was consistent with what was experienced in 2001, when 57% of the Public Counsel's complaint cases were deemed to be justified. The same analysis of the 2003 statistics indicated that a total of 51½% of the complaints submitted to the Public Counsel's Office in that year were justified in whole or in part. While the percentage of justified cases in 2003 was certainly lower than the 57% and 58% experienced in 2001 and 2002, we could see that there was a definite trend over the three year period of 2001 through 2003. During that three year period, over half of the Public Counsel's complaint cases were justified. This was in contrast to the pattern in previous years. During the years from 1996 through 2000, the annual percentage of complaints that had been deemed to be justified or partially justified had averaged 47% of the total.

Because of this shift in the percentage of justified complaints received by the office in 2001, 2002, and 2003, we were particularly interested to see whether the 2004 statistics for the percentage of justified cases would return to the historic lower range of about 47%, or whether we would have a continuation of the trend of having a higher percentage of justified cases. The result of this analysis in 2004 (as is reflected in Table 2) is that 47.2 % of the Public Counsel's jurisdictional complaint cases were deemed to be justified in that year. That this is the exact average of the same statistic that we had seen from 1996 through 2000 suggests that something unusual was, indeed, going on over the previous three years (2001 through 2003) that made those years more likely to produce justified complaints. In particular, 2001 and 2002, the two years when nearly 60% of the complaints to the Public Counsel's Office were justified, would appear to have exceptional as years when, in general, state government was not performing at previous levels, at least not by our measurement. Undoubtedly, an important part of the explanation for this situation, particularly in 2002, were the difficulties associated with the

implementation of the state's new system for administering the distribution of child support payments, which has previously been mentioned.

TABLE 1
SUMMARY OF CONTACTS 2004

<u>Month</u>	<u>Total Inquiries</u>	<u>Information</u>	<u>Complaints</u>
January	198	27	171
February	159	16	143
March	225	26	199
April	196	26	170
May	190	26	164
June	203	40	163
July	202	40	162
August	182	38	144
September	178	32	146
October	219	36	183
November	173	28	145
December	165	25	140
TOTAL	2290	360	1930
Percent of Total Contacts	100%	16%	84%

**TABLE 2
OMBUDSMAN CONTACTS 2004**

Month	Total Logged Inquiries	Total Logged Complaints	Pending Complaints	Justified	Unjustified	Partially Justified	Discontinued	No Jurisdiction	No Jurisdiction Provided Assistance	Total Logged Requests for Info	Info Cases Pending
January	194	167	1	27	47	48	27	4	13	27	0
February	156	140	1	21	31	41	34	6	10	16	0
March	224	198	3	34	38	63	37	5	16	26	1
April	192	167	2	23	31	42	39	10	17	25	0
May	183	157	9	24	30	37	35	5	16	26	1
June	203	163	14	21	45	31	39	7	15	40	1
July	200	160	17	27	28	36	33	7	12	40	2
August	182	144	15	22	25	34	32	7	10	38	1
September	178	146	15	22	26	27	39	7	10	32	0
October	219	183	24	23	39	33	45	13	8	36	1
November	172	144	15	15	26	27	31	15	10	28	0
December	98	80	7	13	16	14	19	2	7	18	0
TOTAL	2201	1849	123	272	382	433	410	88	144	352	7
Percent Total Contacts	100%	84%	6%	12%	17%	20%	19%	4%	7%	16%	0%

TABLE 3
ANALYSIS OF NO-JURISDICTION CASES - 2004

<u>Month</u>	<u>Total-No Jurisdiction Cases</u>	<u>Federal Jurisdiction</u>	<u>County Jurisdiction</u>	<u>Municipal Jurisdiction</u>	<u>Other Subdivisions</u>	<u>Legislative Issues</u>	<u>Courts</u>	<u>Private Matters</u>	<u>Governor</u>
January	17	1	7	1	1	1	5	1	0
February	16	3	2	2	0	1	6	2	0
March	21	0	4	2	3	0	9	3	0
April	27	4	6	1	2	0	6	8	0
May	21	1	8	1	1	0	7	3	0
June	22	2	8	1	2	0	7	1	0
July	19	0	11	2	2	0	2	1	0
August	17	0	7	0	0	0	5	3	0
September	17	0	5	0	0	0	5	3	0
October	21	1	6	0	1	0	5	4	0
November	25	0	7	3	1	0	9	2	0
December	9	0	3	1	0	0	5	0	0
TOTAL	232	12	74	14	13	2	71	31	0
Percent of	100%	5%	32%	6%	6%	1%	31%	13%	0%

TABLE 4
MEANS OF RECEIPT AND LOCATION 2004

Month	Location										Means of Receipt							
	Metropolitan Lincoln		Metropolitan Omaha		Non Metropolitan		Out Of State		State Institutions		Letter		Visit		Telephone		E-Mail	
	Comp.	Info.	Comp.	Info.	Comp.	Info.	Comp.	Info.	Comp.	Info.	Comp.	Info.	Comp.	Info.	Comp.	Info.	Comp.	Info.
January	20	9	17	2	32	6	1	0	97	10	99	12	3	0	64	14	1	1
February	29	5	3	0	30	8	3	0	75	3	73	3	1	0	65	11	1	1
March	36	7	12	4	37	8	3	1	109	6	116	7	6	0	72	18	3	1
April	23	7	17	5	37	5	3	2	87	6	87	8	3	1	73	16	4	0
May	27	7	13	1	25	8	3	0	82	7	88	7	3	0	60	18	3	0
June	27	9	11	1	25	13	3	5	95	10	96	9	5	3	52	23	2	3
July	32	7	16	8	26	9	3	0	75	14	90	11	5	1	57	25	3	1
August	26	8	11	4	20	15	2	3	82	7	75	9	2	1	58	25	5	1
September	24	4	15	4	24	14	3	1	73	8	68	8	5	0	62	22	5	1
October	41	9	20	4	29	12	3	4	86	6	100	8	3	0	73	25	3	1
November	27	10	8	3	31	9	5	2	72	4	71	9	4	1	58	16	3	0
December	13	5	5	1	14	5	2	3	46	3	48	3	1	2	26	11	3	2
TOTAL	325	87	148	37	330	112	34	21	979	84	1011	94	41	9	720	224	36	12

TABLE 5
2004 AGENCY CONTACTS

AGENCY	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
Accountability & Disclosure	0	0	0	0	0	0	0	0	0	0	0	0	0
Administrative Services	0	1	0	1	1	0	2	3	2	1	1	5	17
Aging	0	0	0	0	0	0	0	0	0	0	0	0	0
Agriculture	1	0	0	0	1	0	1	0	1	0	2	0	6
Arts Council	0	0	0	0	0	0	0	0	0	0	0	0	0
Attorney General	0	0	1	2	0	1	1	0	1	2	2	0	10
Auditor	0	0	0	0	0	0	0	0	0	0	0	0	0
Banking	0	0	0	0	0	0	0	0	0	0	1	0	1
Brand Committee	1	0	0	0	0	1	0	0	1	0	1	0	4
Claims Board	0	0	0	1	0	0	0	0	0	0	0	0	1
Corrections	96	77	118	86	95	99	87	81	74	105	74	85	1084
County	9	6	9	11	6	4	8	3	6	6	6	4	78
Courts	10	9	10	15	9	8	5	6	7	11	9	12	111
Crime Commission	0	0	1	0	0	0	0	0	0	1	0	0	2
Economic Development	0	0	0	0	0	1	0	0	0	0	0	0	1
Ed. Lands & Funds	0	0	0	0	0	0	0	0	0	0	0	0	0
Education	1	2	2	1	0	4	0	2	2	2	1	1	17
Environmental Quality	0	0	1	1	0	1	0	1	0	1	0	0	6
Equal Opportunity	0	0	0	1	0	2	1	0	0	1	1	3	9
Ethanol Authority	0	0	0	0	0	0	0	0	0	0	0	0	0
Educational Television	0	0	0	0	0	0	0	0	0	0	0	0	0
Fair Board	0	0	0	0	0	0	0	0	0	0	0	0	0
Federal	3	4	3	5	3	2	4	3	2	2	4	0	34
Fire Marshal	0	0	0	0	1	0	0	0	0	0	0	1	2
Foster Care Rev Bd	0	0	0	0	0	0	0	1	0	0	0	0	1
Game and Parks	0	1	1	0	0	0	0	0	2	1	0	0	5
Governmental Subdivision	0	0	1	1	0	1	0	0	0	2	0	0	5
Governor	1	0	0	0	0	0	0	1	0	0	0	0	2
Health	0	0	0	0	0	0	0	0	0	0	0	0	0
Hearing Impaired	0	0	0	0	0	0	0	0	0	0	0	0	0

HHS Benefits	10	12	7	18	7	16	15	12	15	17	15	2	148
HHS BSDC	1	0	1	1	1	1	0	0	1	2	2	0	10
HHS Child Welfare	13	22	21	15	23	22	25	20	25	22	13	11	234
HHS Misc	8	9	11	8	8	10	9	7	7	7	10	10	105
HHS Regional Centers	12	5	5	10	4	10	7	5	9	7	8	6	88
HHS Regulation	0	1	3	0	1	0	0	1	2	2	1	1	12
HHS Vets Homes	0	0	0	0	0	0	0	0	0	0	0	0	0
HHS Visually Impaired	0	0	0	0	0	0	0	0	0	0	0	0	0
Historical Society	0	0	1	0	0	0	0	0	1	0	1	0	3
Indian Comm	0	0	0	0	0	0	0	1	0	0	0	0	1
Institutions	0	0	0	0	0	0	0	0	0	0	1	0	1
Insurance	1	0	1	3	0	0	0	0	1	0	1	1	9
Investment Council	0	0	0	0	0	0	0	0	0	0	0	0	0
Labor	1	1	2	2	1	2	0	2	3	4	4	0	22
Legislative	12	7	12	11	7	11	14	10	7	11	11	7	123
Library Comm	0	0	0	0	0	0	0	0	0	0	0	0	0
Liquor Control	0	0	0	0	0	0	0	0	0	0	0	0	0
Mexican Amer Comm	0	0	0	0	0	0	0	1	0	0	0	0	1
Motor Vehicles	2	0	4	4	1	1	4	0	2	1	2	3	24
Mtr Veh Dealers Lic Bd	0	0	0	0	0	0	0	0	0	1	0	0	1
Municipal	1	1	2	2	2	1	4	1	0	1	3	3	21
National Guard	1	0	0	0	0	0	1	0	0	0	0	0	2
Natural Resources	1	0	0	0	0	1	0	0	0	0	0	0	2
Pardons Board	0	1	0	0	0	0	0	0	0	0	1	0	2
Parole Board	7	7	6	1	8	7	9	5	0	2	7	5	65
Patrol	0	2	1	1	0	1	3	0	4	0	0	2	14
Personnel	0	0	0	0	1	0	0	0	0	0	0	1	2
Private Matter	11	2	7	7	7	1	4	3	4	7	3	6	63
Probation Adm	0	0	0	1	1	0	0	0	0	0	0	0	2
Public Service Comm	0	0	0	0	0	0	1	1	0	0	0	2	4
Real Estate Comm	0	0	0	0	0	0	1	0	1	0	0	0	2
Retirement Systems	0	0	0	0	0	0	0	2	2	3	0	1	8
Revenue	6	2	2	0	0	2	0	5	1	1	0	1	20
Risk Management	0	0	0	0	0	0	0	0	0	0	0	0	0
Roads	1	1	1	1	1	0	3	0	0	4	1	4	17
Secretary of State	1	1	0	1	1	0	0	1	1	0	1	0	7
St. Board of Equalization	0	0	0	0	0	0	0	0	0	0	0	0	0

St. Surveyor	0	0	0	0	0	0	0	0	0	0	0	0	0	0
State Colleges	0	0	0	0	0	0	0	1	0	0	0	0	0	1
Status of Women	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Electrical Division	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Treasurer	0	1	0	0	1	2	1	0	1	1	0	1	1	8
University	1	1	0	1	1	1	1	1	1	0	2	1	1	11
Veterans Affairs	0	0	0	1	0	0	1	0	0	0	1	1	1	4
Commission for the Blind	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Racing Commission	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Capitol Commission	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HHS-Juv Justice	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HHS-Juv Justice - Geneva	0	0	0	0	0	0	0	0	0	0	0	0	0	0
HHS Juv Justice-Kearney	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	212	176	234	213	192	213	212	180	186	230	190	180	180	2418

APPENDIX

PUBLIC COUNSEL ACT

81-8,240. As used in sections 81-8,240 to 81-8,254, unless the context otherwise requires:

- (1) Administrative agency shall mean any department, board, commission, or other governmental unit, any official, or any employee of the State of Nebraska acting or purporting to act by reason of connection with the State of Nebraska, or any corporation, partnership, business, firm, governmental entity, or person who is providing health and human services to individuals under contract with the State of Nebraska and who is subject to the jurisdiction of the office of the Public Counsel as required by section 73-401; but shall not include (a) any court, (b) any member or employee of the Legislature or the Legislative Council, (c) the Governor or his personal staff, (d) any political subdivision or entity thereof, (e) any instrumentality formed pursuant to an interstate compact and answerable to more than one state, or (f) any entity of the federal government; and
- (2) Administrative act shall include every action, rule, regulation, order, omission, decision, recommendation, practice, or procedure of an administrative agency.

81-8,241. The office of Public Counsel is hereby established to exercise the authority and perform the duties provided by sections 81-8,240 to 81-8,254. The Public Counsel shall be appointed by the Legislature, with the vote of two-thirds of the members required for approval of such appointment from nominations submitted by the Executive Board of the Legislative Council.

81-8,242. The Public Counsel shall be a person well equipped to analyze problems of law, administration, and public policy, and during his term of office shall not be actively involved in partisan affairs. No person may serve as Public Counsel within two years of the last day on which he served as a member of the Legislature, or while he is a candidate for or holds any other state office, or while he is engaged in any other occupation for reward or profit.

81-8,243. The Public Counsel shall serve for a term of six years, unless removed by vote of two-thirds of the members of the Legislature upon their determining that he has become incapacitated or has been guilty of neglect of duty or misconduct. If the office of Public Counsel becomes vacant for any cause, the deputy public counsel shall serve as acting public counsel until a Public Counsel has been appointed for a full term. The

Public Counsel shall receive such salary as is set by the Executive Board of the Legislative Council.

81-8,244. The Public Counsel may select, appoint, and compensate as he may see fit, within the amount available by appropriation, such assistants and employees as he may deem necessary to discharge his responsibilities under sections 81-8,240 to 81-8,254. He shall appoint and designate one of his assistants to be a deputy public counsel, and another assistant to be a deputy public counsel for corrections, and one assistant to be a deputy public counsel for welfare services. Such deputy public counsels shall be subject to the control and supervision of the Public Counsel. The authority of the deputy public counsel for corrections shall extend to all facilities and parts of facilities, offices, houses of confinement, and institutions which are operated by the Department of Correctional Services. The authority of the deputy public counsel for welfare services shall extend to all complaints pertaining to administrative acts of administrative agencies when those acts are concerned with the rights and interests of individuals involved in the welfare services system of the State of Nebraska. The Public Counsel may delegate to members of his staff any of his authority or duty under sections 81-8,240 to 81-8,254 except the power of delegation and the duty of formally making recommendations to administrative agencies or reports to the Governor or the Legislature.

81-8,245. The Public Counsel shall have power to:

- (1) Investigate, on complaint or on his or her own motion, any administrative act of any administrative agency;
- (2) Prescribe the methods by which complaints are to be made, received, and acted upon; determine the scope and manner of investigations to be made; and, subject to the requirements of sections 81-8,240 to 81-8,254, determine the form, frequency, and distribution of his or her conclusions, recommendations, and proposals.
- (3) Conduct inspections of the premises, or any parts thereof, of any administrative agency or any property owned, leased, or operated by any administrative agency as frequently as is necessary, in his or her opinion, to carry out duties prescribed under sections 81-8,240 to 81-8,254;
- (4) Request and receive from each administrative agency, and such agency shall provide, the assistance and information the public counsel deems necessary for the discharge of his or her responsibilities; inspect and examine the records and documents of all administrative agencies notwithstanding any other provision of law; and enter and inspect premises within any administrative agency's control;
- (5) Issue a subpoena, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence deemed relevant to a matter under his or

her inquiry. A person thus required to provide information shall be paid the same fees and travel allowances and shall be accorded the same privileges and immunities as are extended to witnesses in the district courts of this state, and shall also be entitled to have counsel present while being questioned;

- (6) Undertake, participate in, or cooperate with general studies or inquiries, whether or not related to any particular administrative agency or any particular administrative act, if he or she believes that they may enhance knowledge about or lead to improvements in the functioning of administrative agencies; and
- (7) Make investigations, reports, and recommendations necessary to carry out his or her duties under the State Government Effectiveness Act.

81-8,246. In selecting matters for his attention, the Public Counsel shall address himself particularly to an administrative act that might be:

- (1) Contrary to law or regulation;
- (2) Unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's judgments;
- (3) Mistaken in law or arbitrary in ascertainment of fact;
- (4) Improper in motivation or based on irrelevant considerations;
- (5) Unclear or inadequately explained when reasons should have been revealed; or
- (6) Inefficiently performed.

The Public Counsel may concern himself also with strengthening procedures and practices which lessen the risk that objectionable administrative acts will occur.

81-8,247. The Public Counsel may receive a complaint from any person concerning an administrative act. He shall conduct a suitable investigation into the things complained of unless he believes that:

- (1) The complainant has available to him another remedy which he could reasonably be expected to use;
- (2) The grievance pertains to a matter outside his power;
- (3) The complainant's interest is insufficiently related to the subject matter;
- (4) The complaint is trivial, frivolous, vexatious, or not made in good faith;

- (5) Other complaints are more worthy of attention;
- (6) His resources are insufficient for adequate investigation; or
- (7) The complaint has been too long delayed to justify present examination of its merit.

The Public Counsel's declining to investigate a complaint shall not bar him from proceeding on his own motion to inquire into related problems. After completing his consideration of a complaint, whether or not it has been investigated, the Public Counsel shall suitably inform the complainant and the administrative agency involved.

81-8,248. Before announcing a conclusion or recommendation that expressly or impliedly criticizes an administrative agency or any person, the Public Counsel shall consult with that agency or person.

81-8,249.

- (1) If, having considered a complaint and whatever material he deems pertinent, the Public Counsel is of the opinion that an administrative agency should (a) consider the matter further (b) modify or cancel an administrative act, (c) alter a regulation or ruling, (d) explain more fully the administrative act in question, or (e) take any other step, he shall state his recommendations to the administrative agency. If the Public Counsel so requests, the agency shall, within the time he has specified, inform him about the action taken on his recommendations or the reasons for not complying with them.
- (2) If the Public Counsel believes that an administrative action has been dictated by a statute whose results are unfair or otherwise objectionable, he shall bring to the Legislature's notice his views concerning desirable statutory change.

81-8,250. The Public Counsel may publish his conclusions and suggestions by transmitting them to the Governor, the Legislature or any of its committees, the press, and others who may be concerned. When publishing an opinion adverse to an administrative agency he shall include any statement the administrative agency may have made to him by way of explaining its past difficulties or its present rejection of the Public Counsel's proposals.

81-8,251. In addition to whatever reports he may make from time to time, the Public Counsel shall on or about February 15 of each year report to the Clerk of the Legislature and to the Governor concerning the exercise of his functions during the preceding calendar year. In discussing matters with which he or she has dealt, the Public Counsel need not identify those immediately concerned if to do so would cause needless hardship. So far as the annual report may criticize named agencies or officials, it must include also their replies to the criticism. Each member of the

Legislature shall receive a copy of such report by making a request for it to the Public Counsel.

81-8,252. If the Public Counsel has reason to believe that any public officer or employee has acted in a manner warranting criminal or disciplinary proceedings, he shall refer the matter to the appropriate authorities.

81-8,253. No proceeding, opinion, or expression of the Public Counsel shall be reviewable in any court. Neither the Public Counsel nor any member of his staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his official cognizance, except in a proceeding brought to enforce sections 81-8,240 to 81-8,254.

81-8,254. A person who willfully obstructs or hinders the proper exercise of the Public Counsel's functions, or who willfully misleads or attempts to mislead the Public Counsel in his inquiries, shall be guilty of a Class II misdemeanor. No employee of the State of Nebraska, who files a complaint pursuant to sections 81-82,40 to 81-8,254, shall be subject to any penalties, sanctions, or restrictions in connection with his employment because of such complaint.

Bibliography

Anyone interested in learning more about the ombudsman concept as that concept has been implemented through the Nebraska Office of the Public Counsel is invited to read the following materials:

Frank, *The Nebraska Public Counsel - The Ombudsman*, 5 Cumberland - Samford L. Rev. 30 (1974).

Lux, "State Ombudsman Office: Cost Effectiveness Estimates." *Journal of Health and Human Resources Administration* 15 (Winter 1993): 306-312

Miewald and Comer, "Complaining As Participation: The Case of the Ombudsman." *Administration and Society* 17 (February 1986): 481-499

Miewald and Comer, "The Nebraska Ombudsman: An American Pioneer." *International Handbook of the Ombudsman - Country Surveys*, edited by Gerald E. Caiden, Connecticut; Greenwood Press, 1983.

Wyner, *Complaint Resolution in Nebraska: Citizens, Bureaucrats and the Ombudsman*, 54 Neb. L. Rev. 1 (1975).

Wyner, *The Nebraska Ombudsman: Innovation in State Government*. Berkeley: Institute of Government Studies, University of California, 1974.