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February 26, 2010

Thomas P. Herzog
Holt County Attorney
P.O. Box 511
O'Neill, NE 68763

Re: *File No. 10-M-102; Holt County Board of Supervisors; Thomas Herzog*

Dear Mr. Herzog:

This letter is in response to your correspondence dated January 6, 2010, in which you requested that this office investigate an alleged violation by the Holt County Board of Commissioners (the "Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2008, Supp. 2009). In accordance with our normal procedures, we requested a response from the Board after we received your complaint, and we subsequently received a response from the Past Chairman of the Board, Donald Hahlbeck. We also obtained a copy of the minutes of the Board meeting of January 11, 2010 from the Holt County Clerk. We have now had an opportunity to review your allegation and the Board's response in detail, and our conclusions are set out below.

FACTS

Our understanding of the facts in this case is based upon your correspondence, along with the response from the Board and the Board minutes of January 11, 2010. Your Open Meetings Act concerns relate to a vote by the Board during its December 30, 2009 meeting to provide office space in the Holt County Courthouse, and cease paying rent for private office space, for the County Attorney beginning in 2011. The vote on this matter was taken during the agenda item entitled "Salaries: County Officials 2011-2014," which you allege is insufficiently descriptive under the Open Meetings Act. No mention was made on the agenda for discussion of, or vote on, office space for the County Attorney.

On January 11, 2010, after your initial complaint and our request for a response from the Board, the Board again met. During this meeting, they rescinded the motion and vote from the December 30, 2009 meeting regarding office space for the County Attorney. This appears to have been done based upon advice given by you to the Board. A similar motion to provide office space in the courthouse was made following this rescission, but was not approved during this meeting. In addition, the Board maintains that it did not intend to violate the Open Meetings Act on December 30, 2009 and "felt the rent issue was included in the setting of salaries along with compensation packages."

ANALYSIS

Your concern is that the office space rent issue was not on the agenda for the December 30, 2009 Board meeting, and the agenda item "Salaries: County Officials 2011-2014" did not provide notice to the public that office space for the County Attorney would be discussed, in violation of the Open Meetings Act.

Neb. Rev. Stat. § 84-1411 (2009) provides the agenda requirements for purposes for the Open Meetings Act.

(1) Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

Neb. Rev. Stat. § 81-1411 (emphasis added).

We conclude that the agenda item "Salaries: County Officials 2011-2014" was not "sufficiently descriptive" under the Open Meetings Act for discussion of, or voting on, the issue of office space or rent for the County Attorney. The Board's explanation that the rent for office space "was included in the setting of salaries along with the

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compensation package" is not persuasive. As there is no evidence this was an emergency item, we conclude that the discussion and vote on the office space for the County Attorney which occurred during the discussion and vote on "Salaries: County Officials 2011-2014," violated the Open Meetings Act.

However, as we have previously noted, the Board rescinded the December 30, 2009 motion and vote at its January 11, 2010 meeting. By taking this subsequent action, the Board has cured its violation of the Open Meetings Act under *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

CONCLUSION

Based on our analysis, we believe that the agenda item "Salaries: County Officials 2011-2014" was not sufficiently descriptive under the Open Meetings Act for a vote on County Attorney office space or rent. Thus, the vote to provide office space in the courthouse and cease paying rent for private office space for the County Attorney violated the Open Meetings Act. Through a copy of this letter, we admonish the Board for this violation and caution the Board, in future meetings, to ensure that the agenda requirements of the Open Meetings Act are complied with, including the requirement for "sufficiently descriptive" agenda items.

We would also note that since your initial complaint, the Board met on January 11, 2010 and rescinded the December 30, 2009 vote regarding office space. Thus, despite the Open Meetings Act violation, the violation was cured by this later vote of the Board under *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979). Thus, no further action is required regarding this matter.

If you disagree with the analysis we have set out above, you may wish to review the relevant statutes to determine what additional remedies, if any, are available to you under the Open Meetings Act.

Sincerely,

JON BRUNING
Attorney General



Natalee J. Hart
Assistant Attorney General

cc: Holt County Board of Supervisors, Marvin Scholz, Chairman
02-137-20