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July 1, 2013

Mitchell Clark
Hall County Register of Deeds
121 S. Pine Street, Suite 6
Grand Island, NE 68801

RE: *File No. 12-M-131; Hall County Board of Supervisors; Mitchell Clark,
Complainant*

Dear Mr. Clark:

This letter is in response to your e-mail correspondence received by us on September 14, 2012, in which you allege that the Hall County Board of Supervisors violated the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2008; Cum. Supp. 2012) (the "Act"), with respect to the agenda for its September 11, 2012, meeting. As is our normal practice with complaints alleging violations of the Act, we contacted the public body involved and requested a response. In this case, we forwarded your complaint to Pamela Lancaster, Chair of the Hall County Board of Supervisors (the "Board"). On October 3, 2012, we received a response from Hall County Attorney Mark Young, who responded on behalf of the Board. We have now had an opportunity to review your complaint and the Board's response and documentation in detail. Our conclusion and future action in this matter are set forth below.

FACTS

Our understanding of the facts in this matter is based on your e-mail and the information contained in the Board's response.

According to your e-mail, the Board held a meeting on Tuesday, September 11, 2012, commencing at 8:45 a.m. You indicate that the Board's agenda "supposedly" contained an item to discuss the County GIS system. You contend that the agenda was modified within the twenty-four hours prior to the meeting, "and that only the people who

the Board wanted to attend were notified of the revised agenda.” You further contend that the revised agenda was not posted anywhere to your knowledge, and that the agenda which existed on the county website on September 14, 2012, did not match the agenda given to the attendees at the meeting. You indicate that according to the document properties accessible on or around September 14, 2012, it appears that the online agenda was modified on 9/10/12 at 10:36:55 a.m., which is within the twenty-four hour time frame. You further indicate that the online version, at the time your complaint was filed, still did not contain the added agenda item #24.

According to Mr. Young, Marla Conley, the Hall County Clerk, prepares the agenda for the regular Tuesday Board meeting on the preceding Friday afternoon. Based on this agenda, the clerk prepares informational packets for the supervisors and the local press. A broadcast fax is sent to the local media and to others interested in receiving “information with the agenda as it then stands.” He indicates that occasionally items will be added to the agenda after it is prepared on Friday afternoon, but before the twenty-four hour deadline. Mr. Young states that “[a]lthough it is not required by statute, Ms. Conley also posts the agenda on the Hall County website.”

Mr. Young indicates that Supervisor Steve Schuppan e-mailed the Hall County Clerk on Saturday, September 8, 2012, at 7:07 a.m., requesting that a “GIS update report” be added to the September 11, 2012, meeting agenda. Additional documentation from Mr. Young indicates that Stacy Ruzicka, the Hall County Board Assistant, e-mailed Ms. Conley, on Monday, September 10, 2012, at 8:26 a.m., stating “I also added the item that Steve Schuppan emailed over the weekend as number 24.” According to Mr. Young, this revised agenda was provided to the local press prior to 9:00 a.m. With respect to Ms. Ruzicka’s e-mail, Ms. Conley states that “Stacey E mailed me Monday September 10, 2012 8:26 AM to add item GIS update by Casey Sherlock.” Ms. Conley further represents that she “added it to my September 11, 2012 agenda September 10, 2012 by 9:00 a.m. GIS UPDATE (SCHUPPAN)[.] But I did not add it to the agenda on the web site, just to my office copy.”

Mr. Young also states that online versions of meeting agendas are not retained, and that per Ms. Conley, “once she posts the next board meeting information, the previous agenda is deleted.” Mr. Young states he will attempt to persuade Ms. Conley to begin keeping online copies of agenda in case questions arise in the future. The documentation showing a modification to the online agenda at 10:36.55 a.m. on September 10, 2012, was not addressed by the county.

DISCUSSION

Neb. Rev. Stat. § 84-1411 of the Act requires that public bodies provide “reasonable advance publicized notice” of its meetings “by a method designated by each public body and recorded in its minutes.” The statute further requires:

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

As it relates to agendas, the statute requires a public body to do one of two things: (1) include an agenda in its publicized notice; or (2) maintain a continuously current agenda at its main office, and have it readily available for public inspection.

The Board published notice of its September 11, 2012, meeting in the Grand Island Independent on September 5, 2012. The notice indicates that the Board/County Clerk have selected option (2) in order to comply with Neb. Rev. Stat. § 84-1411:

An agenda, kept continuously current, is available for public inspection at the office of the Hall County Clerk, 121 South Pine, Grand Island, Nebraska.¹

We believe that this agenda, therefore, is the official meeting agenda. As such, it is necessary to determine whether *this* document was modified within the twenty-four hours, not whether the online version was timely modified. In this regard, Ms. Conley represents that she amended the office copy of the agenda by 9:00 a.m. The fact that the online version was modified after 9:00 a.m. on September 10, 2012 is not dispositive. Under these circumstances, we are unable to conclude that the Hall County Board of Supervisors violated the Open Meetings Act with respect to its September 11, 2012, meeting agenda. However, we will take this opportunity to strongly suggest to Ms. Conley that, in the future, she make every attempt to ensure that any other versions of the agenda, e.g., the agenda posted on the Hall County website, contain the same information as the official meeting agenda she maintains in her office.

¹ We believe that the published notice is somewhat misleading in that it represents that an agenda "is available for public inspection" when, as indicated by Mr. Young, the agenda was not prepared until the afternoon of September 8, 2012.

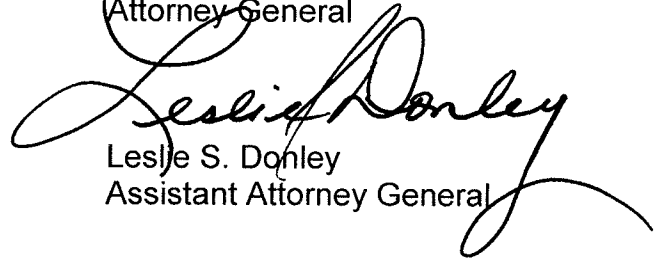
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CONCLUSION

Since we have determined that the Hall County Board of Supervisors did not violate the Open Meetings Act with respect to its agenda for the September 11, 2012, meeting, no further action by this office is necessary, and we are closing this file. If you disagree with the legal analysis set out herein, you may wish to consult with your private attorney to determine what additional remedies, if any, are available to you under the Nebraska Open Meetings Act.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

cc: Mark Young, Hall County Attorney
Todd Mitchell, Hall County Deputy Register of Deeds