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April 20, 2018

Patrick M. Shannon
City Councilman, At Large
Bellevue City Council
2221 Main Street
Bellevue, NE 68005-5239

RE: *File No. 17-M-132; Bellevue City Council; Patrick M. Shannon, Complainant*

Dear Mr. Shannon:

This letter is in response to your complaint, received by this office on June 22, 2017, in which you allege violations of the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2016, Supp. 2017) ("Act") by members of the Bellevue City Council ("City Council"). Upon receipt of your complaint, we contacted the public body involved and requested a response to the allegations raised in the complaint. In the present case, we contacted the Bellevue City Attorney, Patrick Sullivan, who provided us a written response on July 7, 2017. On July 11, 2017, the undersigned spoke with your private attorney, Larry Forman, who contacted us to clarify your position on the complaint. We conveyed this information to Mr. Sullivan on July 17. We have now completed our review of your complaint and Mr. Sullivan's response, and our conclusion and future action in this matter are set forth below.

Before we begin, we will point out to you that many of the allegations in your complaint dealt with the status of your building located at 12709 S. 28th Avenue, which we understand has since been condemned and demolished. Those allegations range from violations of city code by city officials, to the structural soundness of the building, to challenging the qualifications of city officials involved in this process. However, none of those allegations had any bearing on whether the members of the Bellevue City Council violated the Open Meetings Act and, therefore, we did not consider them.

RELEVANT INFORMATION

On June 12, 2017, at 3:42 p.m., the Bellevue City Administrator, Joe Mangiamelli, sent an email to various city officials, including all City Council members.¹ The subject line of the email read “Agenda item – Car Wash property.” The email began: “So we are on the same page” The email went on to discuss a “suggested course of action” recommended by staff relating to that particular agenda item. The email concluded: “If you have questions, we can address them this evening.”

City Council member Paul Cook responded to everyone on the email at 4:32 p.m., indicating that he “will be prepared to make a motion tonight. I want to hear from the public and Mr. Shannon or his representative. I hope the council will have productive questions and discussion.” No one else responded to either Mr. Mangiamelli’s or Mr. Cook’s email.

You allege in your complaint that Mr. Mangiamelli’s email “direct[ed] Councilmembers on what actions he wanted them to take” at the hearing, and that “the solution discussed in this e-mail meeting is exactly what was implemented by the City Council on a Motion by Paul Cook.” You allege that this action constituted a violation of the Open Meetings Act. You further allege that

[t]he public thought that they were attending a Public Hearing and voicing their opinions with a chance of persuading the outcome of the item on the agenda, unaware that an unlawful meeting had transpired and the public hearing had a predetermined conclusion.

. . . The Public Hearing was a Charade perpetrated on the Citizens of Bellevue to hide the backroom deal made earlier.

Finally, you conclude by stating:

This is precisely the type of nefarious actions that the Open Meeting [sic] Act was designed to protect people from. Had I seen this e-mail before the Council meeting that night, I would have had my attorney call this out at the Council meeting.

As noted above, your private attorney, Larry Forman, telephoned the undersigned on July 11, 2017. Mr. Forman was following up on a voice mail previously left with the undersigned wherein he clarified your position regarding your pending complaint. Mr. Forman indicated that Mr. Mangiamelli’s email (and subsequent response) were *not* the violation, but rather it was the *meeting* which preceded sending the email that forms

¹ The recipients also included Mayor Rita Sanders, Michael Christensen, Chief Building Official, and Mr. Sullivan.

the basis for the violation. Mr. Forman alleged that the language in the email, i.e., “[s]o we are on the same page,” confirms that council members held a meeting sometime prior to Mr. Mangiamelli sending his email. When asked what other evidence he had to prove that a meeting had occurred, Mr. Forman told the undersigned that it was apparent from the email. No other evidence was offered.

In response to the clarification provided by your attorney, Mr. Sullivan states that there was no meeting; Mr. Mangiamelli’s email constituted “an administrative recommendation”; and “[t]hat it is an accusation without any basis.”

DISCUSSION

You and your attorney have alleged that the other members of the City Council secretly met sometime prior to the June 12, 2017 City Council meeting. You further allege that language in Mr. Mangiamelli’s email, i.e., being “on the same page,” proves the existence of that secret meeting. No additional information or evidence, other than the email, has been presented to substantiate your claim.

The “same page” everyone was purportedly on related to Mr. Mangiamelli’s recommendations with respect to a show cause hearing scheduled for later that evening. The hearing was described on the agenda as follows:

- Show Cause Hearing on the Proposed Condemnation of the Structures located at 12709 South 28th Avenue (Chief Building Official)
- 1) Resolution No. 2017-11: Condemning the structures located at 12709 South 28th Avenue and Ordering them to be Torn Down and Debris Removed by July 14, 2017

As you know, Mr. Mangiamelli indicated in his email that staff did not wish to go through a nuisance/condemnation process that evening, but were hoping to obtain the council’s approval relating to “cleanup of the property and a definitive timetable for code complaint improvements” Mr. Mangiamelli then states that the “staff would recommend the City Council consider the following suggested course of action.” According to Mr. Sullivan, Mr. Mangiamelli’s email is consistent with his duties under Sec. 2-165(2) of the Bellevue City Code, which authorizes the city administrator “[t]o make investigations into all of the affairs of the city and to make recommendations to the mayor and council for the adoption of such measures and ordinances as are deemed necessary or expedient for the good government of the city.” Accordingly, Mr. Mangiamelli can only recommend matters to the City Council for consideration and formal action, which is what he did when he sent his email. We further note the language used by Mr. Mangiamelli in his email—i.e., staff is “hopeful of obtaining City Council approval”; “staff would recommend”; “suggested course of action.” In this regard, we disagree with your assertion that Mr. Mangiamelli was directing members of the City Council on what actions to take. The

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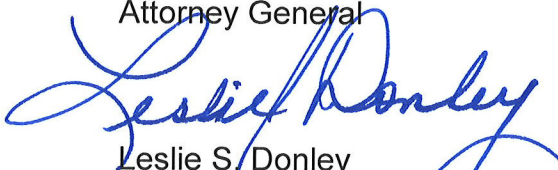
fact that the City Council generally chose to follow staff's recommendations following the show cause hearing does not mean the decision was a "predetermined conclusion" or was the result of a "backroom deal."

However, none of this proves that the City Council members met privately in violation of the Open Meetings Act. To the contrary, it seems to us that if the other members of the City Council had met privately to discuss and decide on a specific course of action with respect to your building, there would have been no reason for Mr. Mangiamelli to send his email. In other words, there would be no need to get everyone, including you, "on the same page." Ultimately, in the absence of any credible evidence from you to support your allegation that the members of the City Council violated the Open Meetings Act by holding a secret meeting, we find your complaint to be without merit. As a result, we are closing this file.

If you disagree with the analysis we have set out above, you may wish to confer with Mr. Forman to determine what additional remedies, if any, may be available to you under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Patrick Sullivan
Larry Forman

49-1999-29