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October 4, 2010

Geri Card
6625 Road 165
Lisco, NE 69148

RE: *File No. 10-M-137; Garden County Board of Commissioners; Geri Card, Complainant*

Dear Ms. Card:

This disposition letter is in response to your correspondence dated September 27, 2010, in which you have requested that this office investigate alleged violations of the Nebraska Open Meetings Act (hereinafter, the "Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2008, Supp. 2009). Specifically, you have alleged that the Garden County Board of Commissioners (the "Board") violated the Act during a regular meeting held on September 13, 2010, and a special meeting held on September 16, 2010. Our conclusion and future action in this matter are set forth below.

YOUR ALLEGATIONS

Lack of Specificity in Agenda Items

In your letter, you indicate that the Board held a regular meeting on September 13, 2010. The agenda for that meeting listed ten items under the heading "**Unfinished Business (all items listed are open for discussion, consideration and appropriate action)**." At issue here are five of those items, set out as follows:

Planning & Zoning Administrator
Open bids for installation of Rip Rap
Open bids for hauling and placement of gravel
Open bids for semi tractors
Open bids for motor graders

You state that the motion made under the item "Planning and Zoning Administrator" resulted in the appointment of a person to the position. For the remaining items, you state: "Each of these after being opened and discussed resulted in an approval of a bid." You then state that after an "elected official" pointed out the "Open bids" items to the County Attorney, a note was slipped to the commissioners, who subsequently rescinded the previous votes to approve the bids. You are apparently claiming that the agenda items were not "sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting," thus violating Neb. Rev. Stat. § 84-1411(1).

Failure to Restate Motion to Close

Your second allegation relates to the motion to go into closed session during the September 13, 2010, meeting. You allege that after the Board approved a motion to close the meeting to discuss emergency relief case #10-2, the presiding officer failed to restate on the record immediately prior to the closed session the limitation of the subject matter of the closed session, in violation of Neb. Rev. Stat. § 84-1410(2).

Failure to Announce Location of the Open Meetings Act

Your final allegation relates to the provision in Neb. Rev. Stat. § 84-1412(8), which requires, in pertinent part, that "public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. *At the beginning of the meeting, the public shall be informed about the location of the posted information.*" (Our emphasis.) You allege that the agenda for the September 16, 2010, meeting omitted this item, and that the chairperson made no reference to the location of the Open Meetings Act during the meeting.

DISCUSSION

You first claim that the Board violated the Open Meetings Act because certain agenda items were not sufficiently descriptive enough to let the public know what was to be discussed. We disagree. The agenda items at issue here indicated that the Board would be *opening bids* for the installation of Rip Rap, the hauling and installation of gravel, and for the procurement of semi-tractors and motor graders. It appears to us that anyone reading these items would logically infer that the Board would not only open the bids, but would discuss and take action on them too. Moreover, here the agenda

contained language which specified that the Board would possibly discuss, consider and vote on certain items. As a result, we believe the Board sufficiently informed the public as to what it would be considering, and the extent of its consideration. We find no violation of the Open Meetings Act in this regard.

We note further that, out of an abundance of caution, the Board voted to *rescind* all of its motions approving the bids. The end result was that the Board took no formal action on the purportedly "questionable" agenda items and instead chose to hold another meeting in which to approve the bids. To us, these actions support a finding that the Board was attempting to comply with the Open Meetings Act, not violate it, as you suggest.

Your second claim relates to the chairman's failure to restate the motion to close immediately after the successful vote to close the meeting to discuss emergency relief case #10-2. If in fact the chairman failed to do so, this omission would constitute a violation of the Act, section § 84-1410(2).

Your third claim relates to the chairman's failure to announce the location of the Open Meetings Act at the beginning of the special meeting held on September 16, 2010. If in fact the chairman failed to do so, this omission would constitute a violation of the Act, section § 84-1412(8).

ACTION BY THE DEPARTMENT OF JUSTICE

The question now becomes what action to take in light of our conclusion that the Board violated the Open Meetings Act when the chairman failed to comply with two technical requirements of the Act. In view of the circumstances, we have determined that neither a criminal prosecution nor a civil law suit to void is warranted here. However, we are concerned that this is the second time in a span of a few months where we found that the Board chairman violated the Open Meetings Act by failing to announce the location of the Act. We will once again caution the Board, by sending a copy of this letter to the county attorney, Philip E. Pierce, that the Board must be more diligent in the future in complying with the technical requirements of the Open Meetings Act. While these requirements may seem insignificant, they are nevertheless provisions of state law, and adherence to them is imperative.

CONCLUSION

Since we have determined that no further action by this office is appropriate at this time, we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under the Act.

Sincerely,

JON BRUNING
Attorney General

Leslie S. Donley
Assistant Attorney General

cc: Philip E. Pierce

49-536-30