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JON BRUNING
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December 6, 2011

Duane Katt
1008 S F Road
Aurora, NE 68818

Re: *File No. 11-M-136; Hamilton County Board; Duane Katt*

Dear Mr. Katt:

This letter is in response to your correspondence dated September 14, 2011, in which you requested that this office investigate alleged violations by the Hamilton County Board of Commissioners (the "Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2008, Cum. Supp. 2010, Supp. 2011). In accordance with our normal procedures, we requested a response from the Board after we received your complaint, and we have since received the Board's response. In addition, we examined the minutes of several Board meetings from August, September, and October 2011, as found on the Board's website. We have now had an opportunity to review your allegations, the Board's response, and the meeting minutes, and our conclusions are set out below.

FACTS

Our understanding of the facts related to your complaint is based upon both your correspondence and the Board's response. Your Open Meetings Act concern is that one or more individual Board members have taken action outside official Board meetings. Specifically, you claim that two Board members are negotiating with the City of Aurora regarding the County Law Enforcement Center without the knowledge of other Board members, and that another Board member is "trying to drum up charges and punishment against a foreman" for the Highway Department without the knowledge of other Board members.

The Board has denied each of your allegations in full.

ANALYSIS

We are unclear as to which provision of the Open Meetings Act you believe the members of the Board have violated. We have inferred that you may believe the Board has violated the provision that all meetings be conducted in public. Neb. Rev. Stat. § 84-1408 (2008) "Meeting means all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body." Neb. Rev. Stat. § 84-1409(2) (2011) This office has consistently stated that in order for a "meeting" to occur, a quorum of the Board must be present.

It is our understanding that the Board is composed of five members, and that a majority of the members constitute a quorum.[1] In other words, a quorum is reached by the attendance of three Board members. Your allegations concerning possible secret negotiations with the City of Aurora involves two Board members, and the allegation regarding the Highway Department concerns only one Board member. Therefore, no quorum was ever present at any alleged outside negotiations or discussions. Therefore, no meeting has occurred related to either of your allegations.

In addition, it appears that the crux of your complaint is that actions are being taken by one or more Board members without the knowledge of other Board members. The Board specifically denies this is the case. Based upon our review of seven sets of meeting minutes from August 15, 2011 through October 3, 2011, we have no reason to suspect otherwise.

As to the Aurora Police Department issue, the Board states "there are no negotiations going on with the City with regard to the Aurora Police Department. The Aurora Police Department will be vacating the Law Enforcement Center in August, 2012 at the termination of the Interlocal Agreement and Lease with the City. This action was taken in an open meeting." All five Board members signed the letter in which this statement was made. We cannot find that two Board members have had clandestine meetings without the other Board members' knowledge when all five Board members deny the allegation.

Further, as to the discipline of a Highway Department employee, the Board states, "Commissioner Fox specifically states that the reprimand that he prepared for the County Roads Employee was prepared by him and that none of the other Commissioners saw the reprimand until it was presented in an open meeting." It is not a violation of the Open Meetings Act for one member of a public body to prepare a document for an open meeting without assistance from other Board members, or even their knowledge. We have reviewed the meeting minutes for the several meetings in which the Highway Department employee was discussed. It appears that this issue was discussed at length at a minimum of six meetings, both in open and closed sessions, and that you addressed the Board on September 19, 2011 regarding this issue. Each of

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1 *See* Neb. Rev. Stat. § 17-105 (2007).

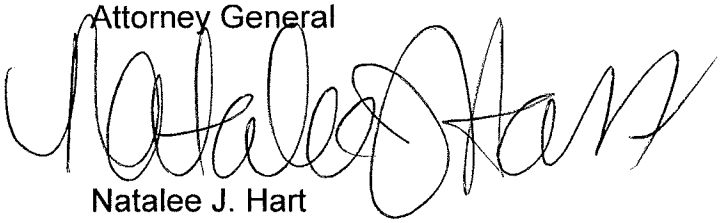
these discussions involved the full Board. Therefore, we do not find a violation of the Open Meetings Act related to this complaint.

CONCLUSION

For the reasons stated above, we cannot find any violations of the Open Meetings Act by the Board. If you disagree with the analysis we have set out above, you may wish to contact your private attorney 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: Board

02-270-30