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October 30, 2015

Gary Aldridge
7112 S. 45th St.
Lincoln, NE 68516

Re: *File No. 15-M-140; Lancaster County Board of Commissioners; Complainant Gary Aldridge*

Dear Mr. Aldridge:

This letter is in response to your correspondence received by us in which you requested that this office investigate an alleged violation by the Lancaster County Board of Commissioners (the "Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2008; Cum. Supp. 2014). As is our normal practice with such complaints, we forwarded a copy of your complaint to the public body which is the subject of the complaint. We have received a response from the attorney for the Board, Deputy Lancaster County Attorney David A. Derbin, and have now had an opportunity to review your complaint and the Board's response in detail. Our conclusion in this matter is set forth below.

FACTS

Our understanding of this matter is based upon your complaint, the minutes of the relevant meeting, and the response we received from the Board. Your complaint concerns the August 11, 2015 meeting of the Board and the manner in which the Board entered into a closed session. The restatement of the limitation of the closed session was made before the vote to close the session was taken by the Board, rather than after. The minutes of the meeting confirm your account. The Board admits that the restatement on the record of the reason for the closed session was made before the vote to close the session was taken.

ANALYSIS

Neb. Rev. Stat. § 84-1410 of the Open Meetings Act provides, in pertinent part:

> (2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. . . .

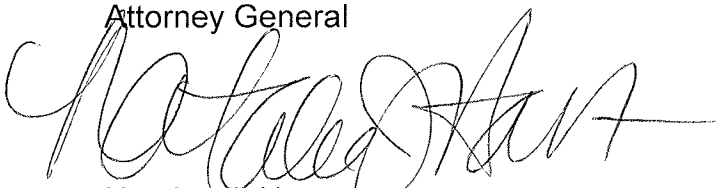
On August 11, 2015, the Board reversed the order of the requirements found in this section and stated the limitation of the closed session before its vote to close was taken. The Board admits that the requirements of the Open Meetings Act found in this section were not taken in the correct order. It does not appear that the Board took any action following this closed session as to the topic discussed during closed session. As a result, the Board's reversal of the requirements as to entering into a closed session did not result in any action that is void or voidable. The Board assures us that it "intends to continue to strive to comply with both the spirit and letter of the Nebraska Open Meetings Act." For these reasons, this office will take no action against the Board for this minor violation of the Open Meetings Act, other than to remind the Board of the proper order set forth in § 84-1410(2) of the requirements for going into closed session.

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 Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Natalee J. Hart
Assistant Attorney General

cc: David Derbin

20-586-29