STATE OF NEBRASKA

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July 9, 2010

Geri Card
6625 Road 165
Lisco, NE 69148

RE: *File No. 10-M-111; Garden County Board of Commissioners; Geri Card, Complainant*

Dear Ms. Card:

This disposition letter is in response to your correspondence dated March 6, March 10, and March 15, 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 violated the Act during its "emergency special meeting" held on March 5, 2010. Upon receiving your first letter, we wrote to you asking that you provide us detailed information as to how you believed the Board violated the Open Meetings Act. You responded to our request in your March 15 letter. Additionally, as is our normal practice, we forwarded a copy of your letters to the public body which is the subject of the complaint. In this case, we forwarded them to the chairman of the Board, Terry McCord. On April 14, 2010, we received a letter from the Garden County Attorney, Philip E. Pierce, who responded on behalf of the Board. We have now had an opportunity to review your complaint and the Board's response in detail. Our conclusion and future action in this matter are set forth below.

FACTS

Our understanding of the facts in this case is based on your correspondence and the response we received from Mr. Pierce.

In your March 15, 2010, letter, you indicate that the Board held a "Special Emergency Meeting" on March 5, 2010. You state that the meeting was called to issue "a verbal reprimand." You indicate that the meeting was on the Friday before the Board's regularly scheduled meeting the following Monday. You question whether a meeting to issue a verbal reprimand to an employee was one requiring "immediate resolution."[1] In other words, you question whether this meeting complied with the requirements of the Open Meetings Act relating to emergency meetings.

You next allege that the Board chairman, Terry McCord, failed to acknowledge that the open meetings law was posted on the meeting room wall at the start of the meeting. In this regard, you claim the Board violated Neb. Rev. Stat. § 84-1412(8). In support of this allegation, you included a copy of the meeting minutes which reflects this omission.

Mr. Pierce informs us that, as County Attorney, he takes responsibility for the caption "Emergency Special Meeting." He states that the March 5, 2010, meeting was clearly not an emergency meeting. When Mr. Pierce learned of the meeting, he advised Mr. McCord that he would have to advertise the meeting as a *special* meeting. However, Mr. Pierce states that he may have used the wording "Emergency Special Meeting." Mr. Pierce states that the meeting was a special meeting, which was advertised properly in the weekly paper in Garden County.

Additionally, Mr. Pierce concedes that Mr. McCord did not announce the location of the Open Meetings Act at the beginning of the meeting on March 5. Mr. Pierce provided a variety of reasons for this oversight—i.e., Mr. McCord was flustered; Mr. Pierce and the Clerk were not present to remind him of the law; and the agenda did not list the Open Meetings Act as it normally does. Mr. Pierce indicates that, as a result, the announcement was just missed. Mr. Pierce concludes by stating:

> I don't believe there was a violation of any law statue [sic] or any intent to deceive the public by failing to inform the public of the time and location of the meeting. Out of the last three years meetings that Mr. McCord has been the chair, this if [sic] the first meeting I am aware that he did not announce the Open Meetings Act. There was no damage to the public. . . .

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[1] As you point out in your letter, the Attorney General has stated that an item of an emergency nature is one that requires immediate resolution by the public body, and one which has arisen in circumstances impossible to anticipate at a time sufficient to place on the agenda of a regular, called, or special meeting of the body. 1975-76 Rep. Att'y Gen. 150 (Opinion No. 116, dated August 29, 1975).

DISCUSSION

In your March 15, 2010, letter, you have set out two alleged violations of the Open Meetings Act by the Board. We will address each allegation below.

1. The Emergency Special Meeting.

Essentially, you question whether the Board's meeting on March 5 to deliver a verbal reprimand to a county employee required immediate resolution to warrant an "emergency" meeting. Neb. Rev. Stat. § 84-1411(5) of the Open Meetings Act allows a public body to conduct an "emergency" meeting without reasonable advance publicized notice as long as certain statutory requirements pertaining to emergencies are met. While the Open Meetings Act itself does not contain a definition of "emergency," the Nebraska Supreme Court, in *Steenblock v. Elkhorn Township Board*, 245 Neb. 722, 515 N.W.2d 128 (1994), has indicated that an emergency in this context is defined as "any event or occasional combination of circumstances which calls for immediate action or remedy; pressing necessity; exigency; a sudden or unexpected happening; an unforeseen occurrence or condition." However, Mr. Pierce represents that the meeting "was a Special Meeting and was advertised properly in the weekly paper in Garden County."

Without question, the meeting was miscaptioned in both the newspaper and the meeting minutes. And while a public body can conduct a special meeting, or an emergency meeting, it cannot conduct an "emergency special meeting" because each of those meetings demand separate statutory requirements. Additionally, we understand that notice for the meeting was published in the Garden County News on March 4. The fact that notice was given at all refutes the notion that the Board attempted to hold an emergency meeting. As a result, and in the absence of any evidence to the contrary, we are unable to find a clear violation of the Open Meetings Act by the Board when it conducted an "emergency special meeting" on March 5.

However, while not specifically raised in your March 15 letter, we would like to discuss the provision in § 84-1411 relating to notice. Specifically, subsection (1) of § 84-1411 provides, in pertinent part, that

> [e]ach public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public.

Additionally, the Nebraska Supreme Court has noted that "[t]he Legislature has not imposed a minimum time period for public notification of a special meeting." *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 877, 725 N.W.2d 792, 803 (2007).

We were not provided any information regarding how the Board gives notice of its regular and special meetings. We do know that the Board gave one day's notice for its March 5 meeting by publishing notice in the Garden County News on March 4. We are also aware that the Garden County News is only published once a week. However, we have to question whether one day's notice is sufficient in light of the statutory language which requires notice to be *reasonable*. Consequently, we would advise the Board, by sending a copy of this disposition letter to Mr. Pierce, to carefully consider, then memorialize, its notification methods for regular and special meetings at its next regular meeting and to accurately record those methods in the meeting minutes, if it has not already done so.

2. Failure to Inform the Public Regarding the Location of the Open Meetings Act.

Neb. Rev. Stat. § 84-1412 (8) states, in relevant part:

> 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.

According to Mr. Pierce, for a variety of reasons, Chairman McCord failed to make the announcement at the beginning of the meeting on March 5. It appears to have been an oversight. As a result, the Board violated the Open Meetings Act in this regard.

ACTION BY THE DEPARTMENT OF JUSTICE

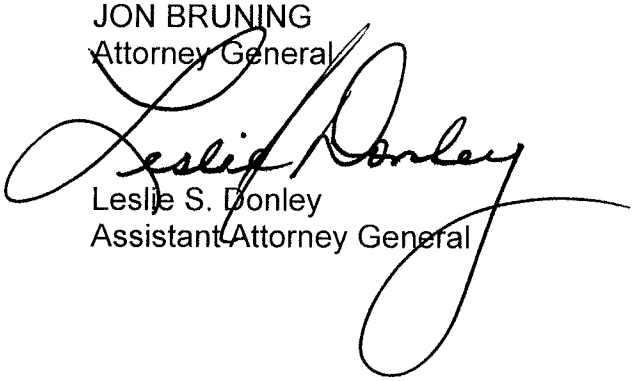
The question now becomes what action to take in light of our conclusion that the Board violated the Open Meetings Act when the chairman failed to announce the location of the Open Meetings Act to the members of the public at the beginning of the March 5 meeting. We have determined that, based on the facts of this case, no criminal prosecution is warranted. Further, a civil suit to void is not necessary because it is clear from the record that the Board took no action during this meeting. However, we will caution the Board to be more careful in the future to avoid missing any of the technical requirements of the Open Meetings Act, including sufficient notice, required announcements and complete meeting minutes.

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

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