STATE OF NEBRASKA

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July 26, 2010

Geri Card
6625 Road 165
Lisco, NE 69148

RE: *File No. 10-M-123; Garden County Zoning and Planning Board; Geri Card, Complainant*

Dear Ms. Card:

This disposition letter is in response to your correspondence dated July 15, 2010, in which you have requested that this office investigate an alleged violation 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 chairman of the Garden County Zoning and Planning Board (the "Board") circumvented the Act when he unilaterally determined "to allow a citizen to proceed with a change in the use of his property without allowing the process in place for this decision to be made at an open meeting." You have alleged that his actions violated Neb. Rev. Stat. § 84-1410(4) of the Act.

DISCUSSION

Neb. Rev. Stat. § 84-1414 of the Open Meetings Act gives this office general enforcement authority over the Act. Our authority under § 84-1414 requires us to determine whether a public body has complied with the various procedural provisions of the Act relating to agenda, notice, closed session, voting, minutes, etc. However, our authority under the Open Meetings Act does not extend to scrutinizing the substantive acts taken by members of a public body in the course of a public meeting. We believe that these are matters inherent to a public body's *governance*, over which we have no authority or jurisdiction. As a result, we cannot determine the legality or appropriateness of a decision, act, motion, etc. made by a public body which does not implicate a provision of the Open Meetings Act. Moreover, we have no general

supervisory authority over governmental subdivisions in Nebraska, including county boards and commissions.

In the present case, you have alleged that the Board chairman exceeded his authority when he made a decision regarding a zoning request and that, as a result, he violated of § 84-1410(4) of the Open Meetings Act. That subsection of law provides:

> Nothing in this section shall be construed to require that any meeting be closed to the public. No person or public body shall fail to invite a portion of its members to a meeting, and no public body shall designate itself a subcommittee of the whole body for the purpose of circumventing the Open Meetings Act. No closed session, informal meeting, chance meeting, social gathering, email, fax, or other electronic communication shall be used for the purpose of circumventing the requirements of the act.

The crux of your complaint is that the Board chairman did not have the authority to allow the proposed zoning change, and that this decision should have been made by the entire Board in an open meeting. However, this allegation does not support a finding that the Board chairman violated the Open Meetings Act in any way. As discussed above, a decision to allow a zoning change goes to the inherent power of the Board to govern its affairs. If you believe the Board chairman exceeded his authority in this regard, then you have the ability to challenge those actions in a court of law. However, we do not believe that you may challenge his actions in this context because what he allegedly did or did not do does not implicate the Act.

Since we have determined that there was no violation of the Open Meetings Act, no further action is warranted by this office and we are closing this file. If you disagree with our legal analysis set out herein, you may wish to consult with your private attorney to determine what additional remedies, if any, are available to you under Nebraska Law.

Sincerely,

JON BRUNING
Attorney General

Leslie S. Donley
Assistant Attorney General

49-515-30