



STATE OF NEBRASKA  
**Office of the Attorney General**

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June 29, 2017

Judy Stearns  
[REDACTED]

Re: *File No. 17-M-120; Clearwater Public Schools Board of Education et al;  
Judy Stearns, Complainant*

Dear Ms. Stearns:

This letter is in response to your correspondence in which you requested that this office investigate certain alleged violations by the Clearwater Public School Board of Education of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2014, Cum. Supp. 2016). Your complaint mentions only "Clearwater," which potentially implicates more than one school board, given the structure of the Clearwater-Orchard School District. It appears, however the two school board members about which you complain are members of the "Clearwater Advisory Board" ("Clearwater Board") which is the entity from which we sought a response. Your complaint also potentially involves the interests of three other school boards, the Neligh-Oakdale Public Schools Board of Education ("Neligh-Oakdale Board"), the Ewing Public Schools Board of Education ("Ewing Board"), and the Nebraska Unified #1 Board of Education ("Unified Board"). In accordance with our normal procedures, we requested a response from each of the school districts which had a possible interest in the outcome of your complaint, and we subsequently received a response from the attorney representing all four school districts. We have now had an opportunity to review your allegations and the school districts' responses in detail, and our conclusions are set out below.

### **ALLEGED VIOLATIONS AND RELEVANT FACTS**

Our understanding of the facts in this case is based upon your correspondence, the response from the school boards, and information we compiled from the website of the school boards. Your complaint concerns a meeting which was attended by representatives of each of the four boards: the Clearwater Board, the Neligh-Oakdale Board, the Ewing Board, and the Unified Board. You believe this meeting to have been in violation of the Open Meetings Act.

The Boards, in their response, provided us with details regarding the meeting at issue. On March 23, 2017, a meeting was held in Neligh, NE, with six individuals in attendance. One individual from the Clearwater Board, one from the Unified Board, and two each from the Neligh-Oakdale Board and the Ewing Board. No board sent a quorum of its board to represent it at this meeting<sup>1</sup>. The meeting was held “to gauge if there was interest in starting a discussion among the Boards about the possibility of consolidating in some form.”

You also make allegations regarding your privacy and the discussion by the principal of the Clearwater School of a conversation you and he had regarding your concerns about the March 23 meeting. This office has no general supervisory authority over governmental subdivisions in Nebraska. This portion of your complaint does not implicate the Open Meetings Act, is outside the enforcement authority of this office, and will not be addressed herein.

### ANALYSIS

Your Open Meeting complaint is that the meeting held on March 23 was in violation of the Open Meetings Act. The Open Meetings Act requires that “[e]very meeting of a public body shall be open to the public.” Neb. Rev. Stat. § 84-1408 (2014). The relevant questions for analysis of your complaint are, first, whether the group of six school board representatives (“Committee”) is a “public body” for purposes of the Open Meetings Act, and if it is, whether that public body held “meetings,” as defined in the Open Meetings Act, which were not held in conformance with the Open Meetings Act.

#### **Whether the Committee is a Public Body**

Neb. Rev. Stat. § 84-1408 states that it is “the policy of this state that the formation of public policy is public business and may not be conducted in secret.” As a result, the Nebraska open meetings laws are a statutory commitment to openness in government. *Wasikowski v. The Nebraska Quality Jobs Board*, 264 Neb. 403, 648 N.W.2d 756 (2002); *Steenblock v. Elkhorn Township Board*, 245 Neb. 722, 515 N.W.2d 128 (1994); *Grein v. Board of Education of the School District of Fremont*, 216 Neb. 158, 343 N.W.2d 718 (1984). Their purpose is to ensure that public policy is formulated at open meetings of the bodies to which the law is applicable. *Dossett v. First State Bank, Loomis, NE*, 261 Neb. 959, 627 N.W.2d 131 (2001); *Marks v. Judicial Nominating Commission for Judge of the County Court of the 20th Judicial District*, 236 Neb. 429, 461 N.W.2d 551 (1990); *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979).

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<sup>1</sup> The Clearwater Advisory Board contains five members, of which three would constitute a quorum; the Unified Board, Neligh-Oakdale Board, and Ewing Board each consist of six members and four would be required for a quorum.

Neb. Rev. Stat. § 84-1409 (2014) defines “public body” for purposes for the Open Meetings Act. This definition, in relevant part, states:

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska . . .(iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law . . .(v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision; and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body. . . .

Thus, if the actions and organization of the Committee are consistent with any of these classifications, it is a public body, and the analysis moves to whether the Committee held meetings. If the Committee is not a public body, our analysis ends there, as meetings of a non-public body are not subject to the requirements of the Open Meetings Act.

Each school board itself is the “governing body of a political subdivision.” As the four school districts at issue here have not yet formed a collaborative district, that joint district is not yet a “political subdivision,” and therefore, the Committee does not fall under this definition in § 84-1409 (1)(a)(i). Second, the Committee is not an “independent board, commission, bureau, committee, council, subunit, or any other body” created pursuant to law as found in § 84-1409(1)(a)(iii). While this Committee may appear to be an “instrumentality exercising essentially public functions” under § 84-1409 (1)(a)(vi), that language was added in 1989 specifically to reach the Nebraska Investment Finance Authority and other entities which have been granted the power and authority to issue bonds and to borrow and expend public money<sup>2</sup>. That description does not fit this Committee. This leaves us with whether the Committee is an advisory committee or a subcommittee.

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<sup>2</sup> Op. Att’y Gen. No. 95014 (February 22, 1995).

### ***Advisory Committee***

Most significantly, we must examine whether the Committee is an “advisory committee” of the four school boards, as defined in § 84-1409(1)(a)(v)<sup>3</sup>. In this case, the question is whether the Committee has provided advice to the four school boards on the topic of the formation of a collaborative district.

From the information we have gathered, it does not appear that any advice was given from the Committee, as a whole, to any of the school boards. There is no evidence that any decisions were made by the Committee or that any actions were taken by the Committee other than informal, preliminary discussions concerning whether any of the boards had interest in potentially pursuing consolidation. While it appears that the members of the Committee provided information and may have made suggestions during their respective school board meetings, it appears to us that the four school boards would each make their own determination independent of anything the others did.

For the above reasons, we do not believe the Committee is an advisory committee of the four school boards.

### ***Subcommittee***

Finally, we must consider whether the Committee is a subcommittee of a governing body of a political subdivision. A subcommittee is generally considered to be made up of only members of the parent body from which it was formed. In this case, a subcommittee of each school board would be made up only of members of each board, and would not include members from other school boards. As the Committee is made up of members from four separate school boards, it cannot be a subcommittee.

Even if this were not true, the Committee is still not a subcommittee. Each full school board is certainly a public body, and any subcommittee thereof which contains a quorum of the full Board would also be a public body. It is our understanding that each school board is composed of five<sup>4</sup> or six<sup>5</sup> members, and that a majority of the members constitute a quorum.<sup>6</sup> In other words, a quorum is reached by the attendance of three<sup>7</sup>

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<sup>3</sup> We note that this office has issued two opinions relating to advisory committees of public bodies. However, neither Op. Att’y Gen. No. 95014 nor Op. Att’y Gen. No. 92020 are applicable here, as both opinions dealt with whether committees formed by the head of an administration, i.e., the Mayor of Omaha and the Chancellor of the University of Nebraska, not containing any members of an elected body were nonetheless advisory committees. Consequently, these opinions will not be discussed herein.

<sup>4</sup> The Clearwater Advisory Board.

<sup>5</sup> Unified Board, Neligh-Oakdale Board and Ewing Board.

<sup>6</sup> See Neb. Rev. Stat. § 17-105 (2007).

or four<sup>8</sup> school board members. However, the meeting at issue here was attended by one to two Board members from each district, and therefore a quorum of any one school board was not in attendance.

For these reasons, we do not believe the Committee is a subcommittee.

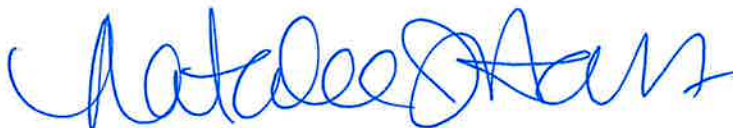
### CONCLUSION

Based on our analysis, we do not believe that the Committee is a "public body" subject to the Open Meetings Act. While we understand your concerns that matters are being discussed that may ultimately affect each district, and any collaborative district that might be formed, the Committee was not required to hold its March 23 meeting open to the public. However, if these four districts, or any combination thereof, continue to meet to discuss consolidation, our office would encourage those districts to hold those as open meetings, in order to further the purpose of the Open Meetings Act of openness in government.

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,

DOUGLAS J. PETERSON  
Attorney General



Natalee J. Hart  
Assistant Attorney General

cc: Bobby Truhe

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<sup>7</sup> Clearwater Board.

<sup>8</sup> Unified Board, Neligh-Oakdale Board and Ewing Board.