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May 15, 2019

Erin L. Dennis
[redacted]

RE: *File No. 19-M-104; City of Crofton City Council; Erin L. Dennis, Complainant*

Dear Ms. Dennis:

This letter is in response to the complaints you submitted to this office on December 19, 2018, January 15, 2019, and January 28, 2019, in which you allege, among other things, violations of the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2018) ("Act") by two members of the City of Crofton City Council, Pamela Berendsen and Larry Peitz, and the mayor of Crofton, Sharol Lawhead. In accordance with our normal policy when we receive complaints of this nature, we sent your complaints to the city attorney, James McNally, and requested a response. We received Mr. McNally's response on February 8, 2019. We have completed our review of your complaints and Mr. McNally's response, and our conclusion and future action as to those matters are set forth below.

On April 1, 2019, we received additional correspondence from you advising that on March 20, a full council passed a resolution ratifying the previous actions of Ms. Berendsen, Mr. Peitz and Ms. Lawhead from and after the December 12, 2018 meeting. However, you question whether matters that were mishandled in the first place are now "cured" with the approval of a resolution. You also allege that the members of the council continue to violate the open meetings law, e.g., meeting without posting notice.

BACKGROUND

On December 14, 2018, then city attorney Daniel Hendrix contacted our office seeking guidance with respect to a meeting conducted on December 12. According to Mr. Hendrix, the City of Crofton operates as a city of the second class and its city council is comprised of four members. During its regular meeting on December 12, two council members [Tom Allen and Sharol Lawhead] resigned leaving two vacancies on the council. After the swearing-in of the new council members and Ms. Lawhead as mayor, the "new"

council held a public meeting. Mr. Hendrix advised the group "that the best course of action would be to adjourn the meeting and not hold further meetings until after the required special election fills the vacant seats." Mr. Hendrix informs us that they declined to follow his advice, and held a meeting over his objection. The original agenda for the regular meeting included an action item to adjourn for lack of quorum following the swearing-in. Mr. Hendrix indicates that the mayor-elect drafted and posted an additional agenda a little more than 24 hours prior to the meeting. Mr. Hendrix states that the mayor began the second meeting by indicating, in effect, that she would serve as a third council member. The new agenda also contained an item for an executive session to discuss personnel issues. Mr. Hendrix states that staff and personnel present at the meeting requested that the discussion be held publicly, but the council declined to do so. Upon returning to open session, Mr. Hendrix indicates that the council approved a motion to retain legal counsel to review a contract. However, while the agenda item mentioned the party affected, the item did not specify the contract at issue or retaining counsel to review the contract. Finally, following the meeting, the group was observed together at a local establishment.

Mr. Hendrix indicated that several concerned citizens had contacted him regarding the events occurring at the meeting, and he was contacting us because of our enforcement authority over the Act. Mr. Hendrix asked that we address a number of questions, including whether the mayor could be counted as a member of the council for purposes of a quorum, and whether the council violated the Act with respect to its agenda, executive session, taking action on a matter not listed on the agenda, and meeting informally as a group after the meeting.

We responded to Mr. Hendrix on December 21. We informed him that the Attorney General was not statutorily authorized to provide him a formal legal opinion.[1] We also indicated that we did not believe the questions relating to whether a quorum was achieved was an open meeting issue *per se*. However, we did indicate that a plain reading of the pertinent statutes [Neb. Rev. Stat. §§ 17-105 and 17-110] suggests that a majority of the elected members of the city council is required to constitute a quorum and the mayor may vote when necessary to break a tie. Based on a four-member council, the presence of three members is necessary to reach a quorum. We advised that neither § 17-105 nor

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[1] Pursuant to Neb. Rev. Stat. § 84-205(4) (2014), the Attorney General is authorized to provide opinions in response to specific legal questions from state agencies and officials when those questions relate to the performance of official duties. The Attorney General also provides opinions to members of the Nebraska Legislature on questions pertaining to proposed or pending legislation, or when the opinion request "pertains directly to the performance of some function or duty by the Legislature itself." Op. Att'y Gen. No. 157 (December 20, 1985) at 1. In addition, the Attorney General may give opinions to county attorneys when the questions posed relate to "all criminal matters and in matters relating to the public revenue." Neb. Rev. Stat. § 84-205(3) (2014). The Attorney General is not authorized to give legal opinions to local governmental bodies, like the City of Crofton, or private citizens.

city ordinance § 1-104 "would support the conclusion that the mayor could be counted as a member of the city council for purposes of a quorum."[2]

On January 10, 2019, Mr. Hendrix again contacted our office. He indicated that the council had chosen to rely on a legal opinion from the Baird Holm law firm, received in early December, which concluded that, notwithstanding the vacancies, "the presence of two council members constitutes a quorum (i.e., two is a majority of two)."[3] Baird Holm Opinion, December 11, 2018, at 2 ("Baird Holm Op."). However, the opinion noted that no Nebraska court has addressed the issue and, as a result,

> there is no precedent other than the language of the statute that the Council can rely upon if it chooses to operate as a two-person council pending election of the vacant seats. Further, the state agencies that regulate the City's actions may have a different interpretation of section 17-105 . . . .

Id. Mr. Hendrix asked us whether the Baird Holm opinion changed our view regarding the quorum issue and inquired as to our future enforcement plans. We subsequently spoke to Mr. Hendrix and provided him our research relating to quorums and voting by municipal bodies when vacancies exist.

YOUR COMPLAINTS

Your first complaint alleges violations of the Act relating to the December 12 meeting. You allege that no notice was given for the second meeting and the three officials went into closed session to discuss "staff" despite requests by staff to have the discussion held in open session. You also allege that upon returning to open session, Ms. Berendsen, Mr. Peitz and Ms. Lawhead approved a motion to hire a law firm to review the Hendrixes' contract.[4] You indicate that there was nothing in the agenda to suggest the Hendrixes' contract would be discussed.

Your second complaint alleges that Ms. Lawhead, Ms. Berendsen, and Mr. Peitz continue to make decisions which significantly impact the city without a quorum. You indicate that they ended the contract with the Hendrix Law Firm, and note that the status of the city treasurer is unclear.

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[2] We also cited the Nebraska Supreme Court case *Schauer v. Grooms*, 280 Neb. 426, 786 N.W.2d 909 (2010), in support of our conclusion.

[3] The specific question posed to Baird Holm was "[w]ill the City Council with two acting members constitute a quorum for the purpose of conducting official City business?" Baird Holm Op. at 1.

[4] In addition to Mr. Hendrix's position as city attorney, we understand that the contract included the services of Mr. Hendrix's wife, Charlie Gail Hendrix, who served as the city administrator.

Your third complaint again raises the lack of quorum issue, and the differing legal opinions received by the city on the subject. You note that if in fact a quorum exists, then the meetings need to be properly noticed. You also allege that certain actions taken by these officials were done despite legal advice to the contrary and against the advice of the Auditor of Public Accounts. You asked us to "again review the quorum issue, review [your] open meeting concerns, and review the violations of our city's operating policies."

CORRESPONDENCE WITH THE CITY ATTORNEY

In our correspondence to Mr. McNally, we advised him that this office had conducted general research on the quorum issue. We acknowledged that we had not identified any Nebraska court which addressed quorum requirements during periods of vacancies. However, our research indicated that the general rule, as expressed in two legal treatises, was that a quorum or majority required has been held to be based on the original full membership, not merely the remaining members. We enclosed a copy of our research for his consideration. We further stated that

> [t]he propriety of the city council's actions at its meetings conducted on December 12, 2018, and January 9, 14, and 23, 2019, hinges on whether the city council may conduct a public meeting with only two city council members. Since it appears that the advice offered by you and Baird Holm is contrary to the general rule, we would request your analysis on this particular question. We would also request a response to the specific allegations raised in the enclosed complaints relating to the Open Meetings Act. We would ask that you provide us your response no later than close of business on March 5, 2019.

On February 11, 2019, we received Mr. McNally's response. He declined to address the quorum issue and the open meetings allegations as requested. However, he acknowledged that

> whether the open meeting laws were violated . . . hinges on whether the current members of the Council could act as a legislative body. My opinion, supported by Baird/Holm, is that it can. To take a contra position would mean that any action by the current members of the Council would be absolutely void. If this be the case then there could occur no violation of the open meeting law because there were no official meetings. I have reviewed the minutes and proceedings prior to the various meetings conducted by the present council and find no violation.

DISCUSSION

We will begin by discussing whether the presence of two members of a four-member city council constituted a quorum. "It is well established that a 'quorum' is

defined as 'the number of persons that are members of a body when assembled who are legally competent to transact the business of such a body.'" *Hagelstein v. Swift-Eckrich Div. of ConAgra*, 257 Neb. 312, 320, 597 N.W.2d 394, 401 (1999). "The commonly recognized definition of a quorum is that it is such a number of a body as is competent to transact business in the absence of the other members." *Id.* at 320, 597 N.W.2d at 401. The general rule in Nebraska is "[i]n the absence of a contrary statutory provision, a majority of a quorum which constitutes a simple majority of a collective body may act for that body." *Chase v. Board of Trustees of Nebraska State Colleges*, 194 Neb. 688, 692, 235 N.W.2d 223, 227 (1975); *Houser v. School Dist. of South Sioux City*, 189 Neb. 323, 326, 202 N.W.2d 621, 623 (1972).

The Nebraska Legislature has determined that for cities of the second class, **"[a] majority of all the members elected to the city council shall constitute a quorum for the transaction of any business . . . ."** Neb. Rev. Stat. § 17-105 (Cum. Supp. 2018) (emphasis added). Applying this language to the Crofton City Council, three members constitute a quorum. In addition, Neb. Rev. Stat. § 17-110 provides, in pertinent part, that

> [t]he mayor may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the city council on any pending matter, legislation, or transaction, and the mayor shall, for the purpose of such vote, be deemed to be a member of the city council.

Neb. Rev. Stat. § 17-110 (Cum. Supp. 2018). A plain reading of this language indicates that the mayor may cast the deciding vote when the city council is tied. However, as indicated in *Schauer v. Grooms*, 280 Neb. 426, 446, 786 N.W.2d 909, 925 (2010), "[t]he presence of the mayor is inconsequential, because the fact that a statute gives a certain official the right to cast the deciding vote in case of a tie in a governmental body does not, of itself, make that official a member of that body for the purposes of ascertaining a quorum or majority, or for any other purpose."

The Open Meetings Act does not define "quorum." Nor does it require the public bodies subject to the Act enumerated in Neb. Rev. Stat. § 84-1409(1)(a) to have a quorum or majority of members present in order to conduct a public meeting.[5] The only reference

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[5] *Cf.* Iowa Code § 21.2(2) (2019) ("'*Meeting*'" means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties." (Italics in original.)); Kan. Stat. Ann. § 75-4317a (2018) ("As used in the open meetings act, 'meeting' means any gathering or assembly in person or through the use of a telephone or any other medium for interactive communication by a majority of the membership of a public body or agency subject to this act for the purpose of discussing the business or affairs of the public body or agency."); S.D. Codified Laws § 1-25-1 (2018) ("[A]n official meeting is any meeting of a quorum of a public body at which official business of that public body is discussed or decided, or public policy is formulated, whether in person or by means of teleconference.").

to quorum is found in Neb. Rev. Stat. § 84-1409(1)(b), which provides that subcommittees of public bodies are not subject to the Act unless a *quorum* of the public body attends the subcommittee meeting or the subcommittee is holding hearings, making policy, or taking formal action on behalf of the parent body.

The Baird Holm opinion, relied on by city officials to proceed with only two members of the city council, concluded that "a plain reading of the statute infers that a quorum relates to the number of elected members, rather than the body as a whole or number of seats on the council." Thus, the two vacancies left two elected members—and a majority of two elected members is two. This conclusion appears to be consistent with the common law rule, which provides that "any position left vacant in a municipal governing body, either by death or recusal due to conflict of interest, is not counted to determine what is a legal quorum." 4 McQuillin Mun. Corp. § 13:35 (3d ed.); *New Jersey Election Law Enforcement Comm. v. Divencenzo*, 451 N.J. Super. 554, 169 A.3d 1002 (2017).

As indicated above, our research has disclosed no Nebraska Supreme Court cases which directly consider the quorum question when vacancies on the public body exist. However, courts in a number of jurisdictions have recognized the general rule that a quorum must be based on the full membership of the public body. In *Ross v. Miller*, 115 N.J.L. 61, 178 A. 771 (1935), the New Jersey Supreme Court considered whether a majority vote of five members of a seven-member city council was sufficient to fill a vacancy on the council. City officials deemed the 3-2 vote insufficient on the presumed theory that a majority vote "of the entire membership of the council prescribed by law was requisite to appointment." *Id.* at 62, 178 A. at 772. The court indicated there was no specific requirement as to the number of members necessary to fill a vacancy, but noted that the quorum statute applicable to municipalities of that particular class provided

> [a] majority of all the members of the municipal council shall constitute a quorum, and the affirmative vote of a majority of all the members shall be necessary to take any action or pass any measure, except as otherwise provided in this act.

Id. at 63, 178 A. at 772. The court found that this statutory language evinced a legislative intent to modify the common law rule, stating that

> [t]he language employed is persuasive of a design and purpose to make the approval of a majority of the full membership prescribed by law, rather than of the qualified, sitting members for the time being, a sine qua non of action by the governing body in all cases except one not here involved. <u>It is fairly to be presumed that, in the use of the phrase "a majority of all the members" of the councilmanic body, both in relation to the number constituting a quorum and in prescribing the requisites of valid action, the legislative concept was the full membership commanded</u>

> by the act, and not a reduced body, however occurring. While it is the settled rule that a statute in derogation of the common law must be strictly construed, it is axiomatic that this rule will not be permitted to defeat the obvious purpose of the Legislature, or lessen the scope plainly intended to be given to the measure.

Id. at 64, 178 A. at 772 (emphasis added). Consequently, the vacancy could not be legally filled by a majority of the existing membership. *Id.* at 62, 178 A. at 772. *Accord Dombal v. Garfield*, 129 N.J.L. 555, 30 A.2d 579 (1943).[6]

In *Clark v. North Bay Village*, 54 So. 2d 240 (1951), the Florida Supreme Court considered whether only two members of a five-member village council were sufficient to constitute a quorum. The village charter provided that "'[t]he council * * * shall act in all matters upon a majority vote of those present, *a majority of the council* being necessary for a quorum.'" *Id.* at 241 (emphasis in original). The trial court found that due to the vacancies, which left only three active members, two members were sufficient to constitute a quorum. Relying on an 1868 case,[7] in which the court determined the quorum requirement for the houses in the Florida Legislature, the *Clark* court found that "regardless of the fact that the authorities may be conflicting upon the subject, this Court is committed to the proposition that 'vacancies from death, *resignation or failure to elect*, cannot be deducted in ascertaining a quorum.'" *Id.* at 242 (emphasis in original).

While not a quorum case *per se*, we find additional guidance in the Nebraska Supreme Court case *State ex rel. Grosshans v. Gray*, 23 Neb. 365, 36 N.W. 577 (1888). Here, the court discussed the legality of a vote to enact an ordinance to redistrict the city of Sutton—a city of the second class—from two wards to four. At the time of the vote, four council members comprised the council. Two members and the mayor voted for the ordinance; the other two councilmen did not vote. An election was subsequently held based on the purported approval of the ordinance, and six new council members were elected, resulting in the exclusion of two incumbents from office.

The court noted that statutes applicable to cities of the second class provided that "'to pass or adopt any by-law, ordinance, or resolution or order to contract, a concurrence of the majority of the whole number of members elected to the council or trustees shall be required.'" *Id.* at __, 36 N.W. at 578. The court further noted "that 'the mayor shall

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6 *See also Hainesport Tp. v. Burlington County Bd. of Taxation*, 25 N.J. Tax 138 (2009) (Courts will construe language defining a quorum as a majority of a public body to mean a majority of the current membership without counting vacancies, unless the legislative language clearly indicates the intent to depart from the common law rule by providing, for example, for a quorum consisting of a "majority of all the members," or a "majority of the whole.").

7 *Opinion of Justices*, 12 Fla. 653 (1868) ("In the clause of F.S.A. Const. art. 4, § 8, that 'a majority of each house shall constitute a quorum,' the term 'house' means the entire number of which the house may be composed without deducting vacancies from death, resignation, or failure to elect.").

preside at all meetings . . . and shall have a casting vote when the council is equally divided, and none other . . . .'" *Id.* at __, 36 N.W. at 578. In concluding that the vote to enact the ordinance was legally insufficient, the court stated:

> Considering these sections together, there can be no doubt that to pass an ordinance for the reorganization of the city by increasing the number of wards, and of the membership of the council, it required the concurring vote of a majority of all the councilmen elected, and the vote of two members of a council consisting of four members was not sufficient; and that the vote of the mayor added nothing to the significance of the proceeding. The provisions of section 10 apply to the general proceedings of the council, and not to the passage of ordinances. It follows, then, that the ordinance of March 7, 1887, is void.

Id. at __, 36 N.W. at 578-79.[8]

In view of the foregoing authorities, we believe that the language in § 17-105, which provides that a quorum shall be reached by "[a] majority of all the members elected to the city council," evinces a clear legislative intent to depart from the common law rule. Thus, *three members*, a majority of the four-member city council, is necessary for the transaction of any business. Since only Ms. Berendsen and Mr. Peitz attended the meetings beginning with the second meeting held on December 12, 2018, up to March 20, 2019, there was no quorum. And in the absence of a legal quorum, there is no ability to transact business. *See Schauer v. Grooms*, 280 Neb. 426, 786 N.W.2d 909 (2010) (A tour by members of the city council was not a meeting under the Act where the members were split into groups and a quorum was never present.); *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 883, 725 N.W.2d 792, 807 (2007) ("[I]nformational sessions of less than quorum of the Omaha City Council did not constitute a public meeting under the Act."); *Penton v. Brown-Crummer Inv. Co.*, 222 Ala. 155, 160, 131 So. 14, 18 (1930) (quoting *City of Benwood v. Wheeling Ry. Co.*, 53 W. Va. 465, 476, 44 S.E. 271, 276 (1903) ("The attendance of a quorum is a condition precedent to everything. Until then there is an absolute incapacity to consider or act in any way upon any matter."); *Dillman v. Trustees of Indiana University*, 848 N.E.2d 348 (Ind. 2006) (Without a majority present, no meeting occurs for purposes of the state open meetings law.); *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87, 99, 64 P.3d 1070, 1078 (2003) ("When less than a quorum is present, private discussions and information gathering do not violate the Open Meeting Law.").

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[8] *See also Hagelstein v. Swift-Eckrich Div. of ConAgra*, 257 Neb. 312, 597 N.W.2d 394 (1999) (The court dismissed a subsequent appeal of a workers' compensation order signed by only two of the three judges who heard the argument after determining the order was void due to the absence of the statutorily required quorum of three judges); *Penton v. Brown-Crummer Inv. Co.*, 222 Ala. 155, 131 So. 14 (1930) ("[I]t 'is a fundamental rule in the law of corporations,' that 'acts done when less than a legal quorum are present, or which were not concurred in by the requisite number, are void.'").

As noted above, in our December 21, 2018, response to Mr. Hendrix, we indicated that we did not believe that his questions pertaining to a quorum, "which requires a construction of statutory provisions relating to cities of the second class, to be an open meeting question *per se*." Despite this initial assessment of the quorum issue, we went ahead and considered your complaints under our enforcement authority over the Act. However, in the course of our analysis, it has become clear that the lack of a quorum and the inability to transact business as a result, do not implicate the Open Meetings Act. Ms. Berendsen and Mr. Peitz did not violate the Act because they acted in the absence of a quorum. Rather, they failed to comply with the requirement in § 17-105, a statute relating to cities of the second class, which requires a quorum of the city council "for the transaction of any business . . . ." Since we find no violation of the Act, and because we have no statutory authority to enforce § 17-105, no legal basis exists for further action by this office.

We will, however, briefly address the city council's attempt to "cure" any defects relating to the meetings in question. During its meeting on March 20, the council approved "a resolution affirming the actions of the mayor and the council from the twelfth of December, 2018 to the present time."[9] While discussing the resolution, the mayor stated that "we've been working with the two council members who we feel is a quorum, but we want to affirm all those actions taken so that there is no question that our new council members approve of what we've been doing since December." *Id.*

We presume that the city council sought to approve such a resolution as a result of the Nebraska Supreme Court case *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979). In *Pokorny*, a taxpayer filed suit against the city seeking to void actions of the city council relating to a land purchase due to alleged violations of the open meetings law. The court found that the city council had violated the law with respect to two special meetings due to inadequate notice, an improper closed session, and noncompliance with § 17-106 (requiring a written call and object for special meetings for cities of the second class). However, the court disagreed with the trial court's order permanently enjoining the city "'from carrying out any action authorized' at the [invalid] meetings," finding such an order would permanently prevent the purchase of the land and appeared contrary to "the intent or purpose of the public meetings law." *Id.* at 341, 275 N.W.2d at 285. Instead, the court held that "[i]t is a general principle of law that where a defect occurs in proceedings of a governmental body, ordinarily the defect may be cured by new proceedings commencing at the point where the defect occurred." *Id.* at 341, 275 N.W.2d at 285.

In discussing what effect the two special meetings had as a result of the violations, the court stated:

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[9] The March 20, 2019, meeting of the Crofton City Council may be viewed at https://www.youtube.com/watch?v=GrBd9URNmkU. Discussion on the resolution begins at approximately 1:20:10.

> The effect of the invalidity of the meetings of March 16 and March 25 is the same as if the meetings had never occurred. No action authorized at those meetings could be sustained by reliance upon the proceedings of the council at those meetings. This does not mean the council could not authorize the purchase of the land at a subsequent meeting which complied with all statutory requirements. This is what happened at the meeting of March 29, 1977.

Id. at 341, 275 N.W.2d at 285. The court then described in what manner the subsequent meeting cured the defects arising from the invalid special meetings: All of the members were in attendance; the notice was posted in three places a week before the meeting; the agenda item was sufficiently stated; the city attorney read the contract to the city council in open session; the city council discussed the contract, then voted to approve it. *Id.* at 341, 275 N.W.2d at 285.

Pokorny is an open meetings case, where open meetings violations committed by the city council at two special meetings resulted in the court invalidating the actions taken at those meetings. The *Pokorny* court held that a public body may cure those defects by holding "new proceedings commencing at the point where the defect occurred." In the present case, there were no "proceedings" nor were there any open meetings violations. The "defects" here involve noncompliance with § 17-105, resulting in the lack of a quorum and the inability to transact business. Since there were no proceedings during the timeframe in question, and all actions taken by Ms. Berendsen and Mr. Peitz are void, a serious question exists as to whether the resolution, which sought to *ratify* the actions taken by two council members when they had no legal authority to act, had the desired curative effect.[10] Consequently, we believe that a taxpayer lawsuit challenging the unauthorized expenditure of public funds as a result of the actions taken during the timeframe in question is available to you and other Crofton residents. "A resident taxpayer, without showing any interest or injury peculiar to itself, may bring an action to enjoin the illegal expenditure of public funds raised for governmental purposes." *Chambers v. Lautenbaugh*, 263 Neb. 920, 644 N.W.2d 540 (2002); *Professional Firefighters of Omaha v. City of Omaha*, 243 Neb. 166, 498 N.W.2d 325 (1993).

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[10] *See also Wolf v. Grubbs*, 17 Neb. App. 292, 325, 759 N.W.2d 499, 527 (2009) ("[I]t is not insignificant to the question of the award of fees and costs that the governmental body can 'repair' actions taken at *defective meetings*." (emphasis added)); *Wait v. Southern Oil & Tar Co.*, 209 Ky. 682, __, 273 S.W. 473, 475 (1925) (Curative statute applicable to cities of the second class comparable to statute at issue "had no application because the ordinance was not erroneous but void.").

CONCLUSION

We conclude that the presence of only two members of the Crofton City Council was insufficient to establish a quorum and, as a result, the members had no legal authority to transact business. We further conclude that the actions of the two members of the city council constituted noncompliance with Neb. Rev. Stat. § 17-105, and did not constitute violations of the Open Meetings Act. Finally, we believe a serious question exists as to whether the city council's resolution ratified the actions taken by only two members of the Crofton City Council, when those actions were not merely defective but void.

Since there is no legal basis for further action by this office, we are closing our file. If you disagree with the analysis set forth above, you may wish to consult with your private attorney to see what other legal remedies may be available to you.

Sincerely,

DOUGLAS J. PETERSON
Attorney General

Leslie S. Donley
Assistant Attorney General

c: James McNally

49-2196-29