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February 4, 2010

Joeleen A. Dodd
587 N. Spruce St.
P.O. Box 305
Long Pine, NE 69217-0305

RE: *File No. 10-R-103; Brown County Rural Fire Board, and various Long Pine Organizations; Petitioner Dodd*

Dear Ms Dodd:

This letter is in response to your letter dated January 18, 2010, and received by us on January 20, 2010, in which you requested our assistance in obtaining certain records belonging to the Brown County Rural Fire Board, the Long Pine Volunteer Fire Department, the Long Pine Foundation, and the Long Pine Chamber of Commerce. We reviewed your letter seeking information from these entities under the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2008; Supp. 2009), and we considered your letter to be a petition under § 84-712.03. Our response to your petition under the Nebraska Public Records Statutes ("NPRS") is set out below.

FACTS

On or about December 19, 2009, you mailed a letter to each of the entities listed above and requested certain documents. With respect to the Brown County Rural Fire Department, you requested copies of an interlocal agreement which you and Fire Chief Doug Rau had discussed on December 17, 2009. With respect to the other entities, you requested copies of documents and information to specific questions. For example, you requested that the Long Pine Fire Department provide you a "list of Long Pine Fire Department members participating in the recent fire training exercise" and the "date the Long Pine Ambulance was removed and why." Each of your letters requested that copies of the documents/information be mailed to you, the City of Long Pine, attention

Mayor Al Graves, and the undersigned.[1] You enclosed a personal check in each request letter in the amount of $10.00 for "postage and mailing costs."

According to your petition, on December 23, 2009, you received a telephone call from Mr. Rau, who advised that he had been unable to locate either an original or copy of the agreement you requested. You indicate that several days later, Mr. Rau advised that he was having someone continue to look for the document because Rau also wanted to know what had been agreed upon and by what entities. You state that as of the date of your petition, you "have received neither a copy of the Interlocal Agreement or a return of my $10.00 check for photocopies."

With respect to the other entities, you indicate that Jim DeBolt, Secretary/Treasurer of the Long Pine Volunteer Fire Department advised you in a letter dated December 28, 2009, that "I do not have to give out any of the information that you requested." He included an article from the *Nebraska Firefighter* and your check for $10.00. On January 5, 2010, you received a letter from Shanda Benemerito, Secretary/Treasurer of the Long Pine Foundation dated December 31, 2009. Ms. Benemerito wrote: "This letter is to confirm we have received your request for information regarding the Long Pine Foundation." Finally, you indicate that as of January 16, 2010, you have received no response from the Long Pine Chamber of Commerce.

ANALYSIS

We will begin by discussing the basic parameters of the Nebraska Public Records Statutes ("NPRS"). Generally speaking, these statutes allow interested persons in Nebraska the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts therefrom, and to obtain copies of public records in certain circumstances. However, while the Act provides for access to and copies of public records, it does not require public officials to answer questions, or to create records which do not otherwise exist.

In the present case, it is our understanding that Mr. Rau verbally conveyed to you on December 23, 2009, that he was unable to locate the requested document. However, Mr. Rau subsequently did indicate to you that the search for the document was ongoing. On January 20, 2010, the undersigned contacted Mr. Rau by telephone

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[1] With respect to your public records requests, we must point out that your requesting that entities provide three copies and mail those copies to individuals other than yourself is highly irregular and not contemplated nor authorized under the NPRS. We would suggest that, in the future, you refrain from this practice.

to get an update of the search, and was advised that, despite a good faith effort, no document was ever located. We advised Mr. Rau to put that information in writing and mail it to you immediately, which he did. Consequently, we do not believe that you have been denied access to public records because the interlocal agreement simply could not be found. We have instructed Mr. Rau, however, that in the future all responses to requests for public records be in writing and made within the statutory time frame.

As noted above, the NPRS gives all citizens of this state, and all other interested persons, access to or copies of *public records* of public agencies. Neb. Rev. Stat. § 84-712.01(1) defines public records, in pertinent part, as

> all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

Upon review, it appears to us that the Long Pine Volunteer Fire Department, the Long Pine Foundation, and the Long Pine Chamber of Commerce do not fall within the list of public governmental entities set out above. As a result, we do not believe that they are subject to the Nebraska Public Records Statutes, and are therefore not required to provide you copies of the requested records. And, even if they were subject to the NPRS, they still would not be required to compile information and answer questions under the guise of a request for public records. We would instruct the foundation and the chamber of commerce, by mailing a copy of this letter to those entities, to immediately return your personal check to you if they have not already done so.

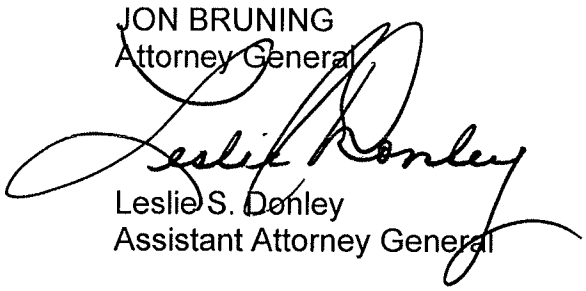
Finally, for your information, Neb. Rev. Stat. § 84-712.03 of the Nebraska Public Records Statutes authorizes the Attorney General to make a determination as to whether public records have been unlawfully withheld from citizens requesting those records. In similar fashion, Neb. Rev. Stat. § 84-1414 of the Open Meetings Act gives the Attorney General (along with the county attorney of the county in which the public body ordinarily meets) general enforcement authority over that act. Our authority under these statutes, however, does not extend to general supervision of local public bodies or policing the action those bodies may take during the course of open meetings. Consequently, because the bulk of the allegations listed in your letter fall outside of our enforcement authority, we must decline to render our opinion as to the appropriateness of those actions.

CONCLUSION

For the reasons stated above, we do not believe that you have been improperly denied access to public records. For those reasons, we are closing your file.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Doug Rau
Jim DeBolt
Shanda Benemerito
Longe Pine Chamber of Commerce