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December 29, 2011

Lynn Mathis
875 W. 19th
Chadron, NE 69337

Re: *File No. 11-M-142; Chadron City Council; Complainant Lynn Mathis*

Dear Ms. Mathis:

This letter is in response to your correspondence received by us in which you requested that this office investigate an alleged violation by the Chadron City Council ("Council") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2008; Cum Supp. 2010; Supp. 2011). In accordance with our normal procedures, we requested a response from the Council after we received your complaint, and we subsequently received a response from J. Adam Edmund, attorney for the Council. We have now had an opportunity to review your allegations and the Council's response in detail, and our conclusions are set out below.

FACTS

Our understanding of the facts in this case is based upon your correspondence, along with the response from the Council. Your Open Meetings Act concerns relate to a series of meetings members of the Council held with individual City employees following the recall of two Council members, who also served as the Mayor and Vice Mayor, and the resignation of the City Manager. Your allegation is that these meetings violated the Open Meetings Act. The Council admits these employee meetings were held, but it denies the meetings were a violation of the Open Meetings Act. We agree, for the reasons below.

ANALYSIS

Over time, our office has consistently taken the position that two things must occur for a public body to hold a meeting that is subject to the requirements of the Open Meetings Act. First, we have indicated that a quorum of a public body must be present to constitute a "meeting." Second, we believe that a meeting of a public body only occurs if that public body engages in some of the activities set out in the statutory definition of "meeting" found at Neb. Rev. Stat. § 84-1409(2) (2011), i.e., the public body

must engage in "briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body." In our view, when both of these elements have been satisfied, a "meeting" of a public body has occurred under the Open Meetings Act.

It is our understanding that the Council is composed of five members, and that a majority of the members constitute a quorum.[1] In other words, a quorum is reached by the attendance of three Council members. However, on October 4, 2011 two members of the Council were recalled by voters. Replacement Council members did not take office until November 7, 2011. During the interim, the Council consisted of only the three remaining Council members. The relevant question to our inquiry is whether a quorum was satisfied by the attendance of a majority of the members of the full body, or a majority of only the seated members. We believe it is the former.

The common law rule is that, in the absence of a statutory provision to the contrary, a majority of all members of a public body shall constitute a quorum and a majority of the quorum, qualified to act, may decide to take action. See, Op. Att'y Gen. No. 97009 (January 23, 1997). While the Council may have been missing two members for approximately one month, the full body still consisted of five members during that time. Therefore, a quorum would have been satisfied by the attendance of three members of the Council.

Your allegation is that two of the remaining members of the Council, Mr. Grantham and Ms. Fischer, met with City employees after October 18, 2011. The Council admits these meetings occurred. However, as only two Council members were present for these meetings, a quorum was not satisfied. Therefore, without a quorum, there was no "meeting" under the Open Meetings Act, and the Council was not in violation of the Act.

In addition, it appears to us that even if a quorum had been present, the other requirement for a "meeting," that the quorum engaged in the discussion of public business, formation of tentative policy, or taking action, was not met. The Council members met with employees during a difficult transition period. The meetings were meant to reassure them, and to ensure that the City continued to operate without a city Manager. No official actions were taken, and no policies were formed during these meetings. It is our conclusion that these meetings did not violate the Open Meetings Act, as neither requirement for a "meeting" was met.

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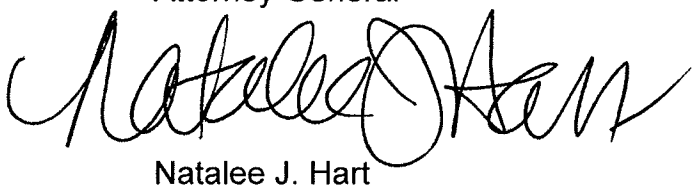
1 *See* Neb. Rev. Stat. § 17-105 (2007).

CONCLUSION

For the reasons stated above, we do not believe that the Council violated the Open Meetings Act in October 2011. 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,

JON BRUNING
Attorney General



Natalee J. Hart
Assistant Attorney General

Cc: J. Adam Edmund