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March 12, 2013

Mr. Fran Chadwick
P.O. Box 331
601 S. 7th
Nebraska City, NE 68410

Re: *File No.12-M-127; Nebraska City City Council; Chadwick*

Dear Mr. Chadwick:

We are currently in the midst of reviewing several of our files under the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2008, Cum. Supp. 2012) (the "Act"), which remain open and pending from 2012. One such file involves a complaint which we received from you on August 9, 2012, against the City Council of Nebraska City, Nebraska (the "Council"). We have completed our review of your complaint, and our conclusions are set out below.

FACTS

After we received your complaint, we followed our usual procedure and requested a response to your complaint from Nebraska City Mayor Jack Hobbie. Mayor Hobbie subsequently provided a response to us, and our understanding of the facts surrounding your complaint is based upon that complaint and the response from Mayor Hobbie.

The City of Nebraska City follows the Commission form of government set out in Neb Rev. Stat. §§ 19-402 through 19-433 (2012). As a result, there are five members of the Council, including the Mayor, all of whom are Commissioners with specific responsibilities in city government. On that basis, three Commissioners constitute a quorum of the Council.

On May 31, 2012, the Mayor and the City's Finance Commissioner were meeting with City Department heads as a finance/budget subcommittee of the Council. The department heads were presenting their "wish lists" for capital expenditures and operating expenditures for their departments for the upcoming fiscal year. Mr. Jeff Crunk, the City's Parks and Recreation Commissioner, walked into that meeting so that

a quorum of the Council was present. At that point, discussion of the City finances and budget ceased, and the Mayor asked Mr. Crunk to leave so as to avoid having a quorum of the Council at the meeting. Mr. Crunk followed the Mayor's request and left the subcommittee meeting. The subcommittee's discussion then continued.

On July 23, 2012, a special meeting of the Council was held where the City department heads presented their full budget and capital improvement requests to the Mayor and the Commissioners. The City's budget hearing and formal action on the City's budget for 2012-2013 occurred on September 4, 2012.

ANALYSIS

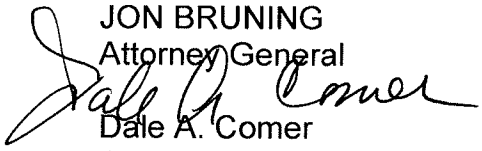
It appears that your complaint letter implicates two issues under the Open Meetings Act. First, your letter raises the issue of whether the subcommittee meeting with the Mayor and the City's Finance Commissioner on May 31, 2012, was improper under the Act because no notice of that meeting was given to the public. However, under § 84-1409 (1)(b), subcommittees of public bodies are not subject to the Open Meetings Act unless a quorum of the public body attends the subcommittee meeting, or unless the subcommittee is holding hearings, making policy, or taking formal action on behalf of its parent body. Under the present circumstances, it does not appear that the budget/finance subcommittee of the Council engaged in any of those latter tasks at its meeting on May 31, 2012. Moreover, since Mr. Crunk followed the Mayor's request and left the meeting when asked, a quorum of the Council did not attend the subcommittee meeting. Consequently, we do not believe that the subcommittee meeting was subject to the Open Meetings Act, and no notice of that meeting to the public was necessary.

Your second issue seems to be that members of the public and all members of the Council did not have an opportunity to hear the department heads as they presented their "wish lists" for capital expenditures and operating expenditures for their departments for the upcoming fiscal year to the budget/finance subcommittee. Absent some right in the public or the Council to attend the subcommittee meeting, we are not entirely sure how loss of the opportunity to hear those discussions violated the Open Meetings Act. In any event, the department heads apparently presented their full budget and capital improvement requests to the Mayor and the Commissioners at a special meeting on July 23, 2012, and that meeting was followed by the City's budget hearing and formal action on the City's budget for 2012-2013 on September 4, 2012. Action by a public body which is proper under the Open Meetings Act may cure any defects in actions previously taken by the same public body. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979). To the extent there were any problems under the Open Meetings Act with the subcommittee meeting regarding budget and capital improvement requests on May 31, 2012, it seems they were corrected by the subsequent open Council meetings.

For the various reasons discussed above, we do not believe that your complaint involves any violations of the Open Meetings Act, and we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, remain available to you under the Open Meetings Act.

Sincerely,

JON BRUNING
Attorney General



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