STATE OF NEBRASKA
Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

JON BRUNING
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

June 20, 2014

Brenda Tophoj
19722 Road 50
Lewellen, NE 69147-3026

RE: *File No. 14-M-113; Garden County Board of Commissioners; Brenda Tophoj, Complainant*

Dear Ms. Tophoj:

This disposition letter is in response to your complaint received by us on April 21, 2014, in which you allege a potential violation of the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2008, Cum. Supp. 2012, Supp. 2013) (the "Act"), by the Garden County Board of Commissioners ("Board"). As is our normal practice with complaints alleging violations of the Act, we contacted the public body involved and requested a response. In this case, we forwarded your complaint to Board chairperson Robert Radke. On May 8, 2014, we received a response from Garden County Attorney Philip E. Pierce, who responded on behalf of the Board. We also requested and received documentation from the *Garden County News* with respect to a notice of public hearing published in the newspaper on March 13, 20, and 27, 2014. We have now had an opportunity to consider your complaint and the Board's response in detail. Our conclusion and future action in this matter are set forth below.

FACTS

Our understanding of the facts in this matter is based on your complaint, the information contained in the Board's response, and the documentation we received from the newspaper.

The alleged violation involves a purported meeting held by the Garden County Board of Commissioners on March 31, 2014. You allege that "[t]his meeting was conducted without a quorum, as only Chairman Robert Radke was present. The other two board members, Casper Corfield and Randy Dormann, were absent." Specifically, you assert that the Board violated the Act by convening a meeting without a quorum.

In support of your allegation, you provided us a newspaper article entitled "Minutes, Garden County Commissioners," which appeared in the *Garden County News* on April 17, 2014. These "minutes" indicate, in pertinent part:

> The Board of the County Commissioners in and for Garden County, Nebraska met on March 31, 2014, at the Garden County Courtroom for a Hearing to discuss and explore interest and the needs of residents. Notice of the hearing was given in advance by publication in the Garden County News on March 13th, 20th and 27th. All proceedings hereafter shown were taken while the convened meetings were open to the public.
>
> Chairman Radke acknowledged the Open Meeting Laws.
>
> Hearing was called to order at 10:11 a.m. by Radke, with the following board members present: Robert Radke Absent: Casper Corfield and Randy Dormann. Also present were: Becky Hunt, Janet Shaul, Teresa McKeeman, Ron Shearer and Marlis Shearer. . . .

According to Mr. Pierce, the proceeding on March 31, 2014, "was a public hearing for the purpose of public opinion on the purchase of the Garden County Transportation Bus Barn." He indicates that "the minutes were labeled wrong as this was a hearing not a meeting." He further indicates that no decisions were made by the Board, and there was no quorum.

Finally, the notice which appeared in the *Garden County News* on March 13, 20, and 27, 2014, and referenced in the "minutes" above, reads, in pertinent part:

> NOTICE OF PUBLIC HEARING FOR PUBLIC TRANSPORTATION BUS BARN
>
> Notice is hereby given that a public hearing will be held at the Garden County Courthouse Court Room at 611 Main Street, Oshkosh, Nebraska 69154 at 10:00 a.m. on March 31st, 2014 for the purpose of considering the purchase of the Garden County Transportation Bus Barn, a project for which financial assistant [sic] is sought from the Federal Transit Administration, pursuant to the Federal Transit Act (FTA) . . . .
>
> * * *
>
> At the hearing, the Garden County Public Transportation will afford an opportunity for interested persons or agencies to be heard with respect to the purchase of Garden County Transportation ADA Small bus. Interested persons may submit orally or in writing, evidence and recommendations with respect to the project.

A copy of the hearing notice is attached to this disposition letter.

DISCUSSION

Over time, this office has consistently taken the position that two things must occur for a public body to hold a "meeting" subject to the requirements of the Open Meetings Act. First, a quorum of a public body must be present. Second, the public body must engage in at least one of the activities set out in the definition of "meeting" in Neb. Rev. Stat. § 84-1409(2) (Cum. Supp. 2012)—i.e., "briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body." In our view, absent either of those elements, no "meeting" of a public body has occurred under the Act.

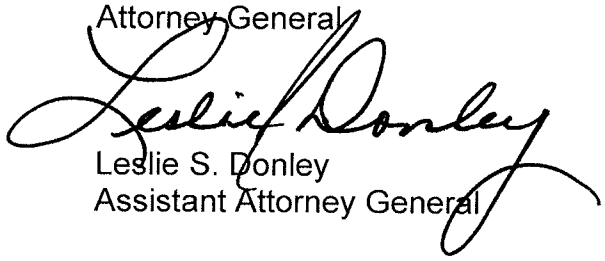
In the present case, it is unnecessary to apply these principles to the proceeding held on March 31, 2014. Mr. Pierce has represented to us that this was a public hearing to elicit public testimony on the purchase of a bus barn, not a meeting of the Garden County Board of Commissioners. The published notice of hearing, which does not even mention the Board of Commissioners, supports this fact. However, we can understand how you might believe the Board attempted to hold a meeting with only one Board member present in light of the published "minutes." In any event, in the absence of a quorum of a public body, there is no meeting. If no meeting is convened, there can be no violation of the Act.

CONCLUSION

Since we have determined that the Garden County Board of Commissioners did not violate the Open Meetings Act with respect to the public hearing held on March 31, 2014, no further action by this office is appropriate at this time. Consequently, we are closing this file. If you disagree with our analysis under the Open Meetings Act, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under those statutes.

Sincerely,

JON BRUNING
Attorney General

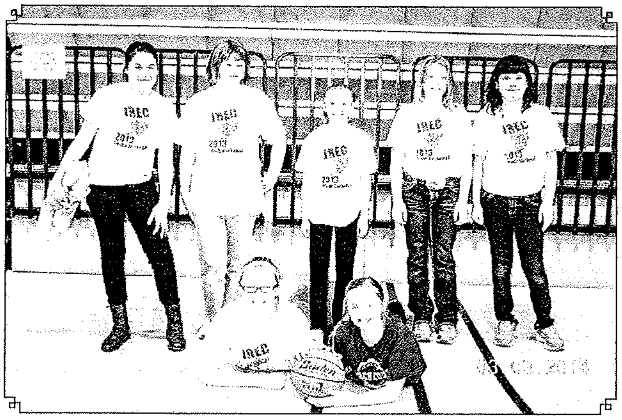


Leslie S. Donley
Assistant Attorney General

Attachment
c: Philip E. Pierce

49-1134-30

Sports & Legals



5th / 6th Grade Youth Basketball Team

This is a picture of the 5th and 6th grade youth basketball team that was not available at the time we published the rest of the youth teams.

Pictured, from left to right, front, Madi Leach and Kayden Kramer. Back, Maddie Lake, Lina VanWey, Kaitlyn Hunt, Kelsee Moffat, and Melissa Zambrano.

Season Stats for the Lady Eagles

Alissa Miller, 1 rebound, 4 take overs and 4 fouls

Alisha Heelan, 10 2-pointers,13 free throws, 33 points, 25 rebounds, 4 steals, 2 assists, 22 take overs, 23 fouls

Mikayla Wiant, 3 rebounds, 1 foul

Megan Dormann, 2 2-pointers, 1 3-pointer, 3 free throws, 8 points, 2 rebounds, 2 take overs, 2 fouls

Sara Beisner, 2 rebounds, 2 take overs,

Alicia Ehrlich, 46 2-pointers,20 3-pooints, 18 free throws, 130 points, 43 rebounds, 2 blocks, 27 steals, 6 assists, 50 take overs, 41 fouls

Lissa Young, 1 rebound, 1 take over

Ashlyn Jenkins, 15 2-pointers, 11 3-pointers, 8 Free throws, 49 points, 43 rebounds, 17 steals, 9 assists, 44 take overs, 23 fouls

Baily Davis, 97 2-pointers, 15 3-pointers, 44 free throws, 253 points, 156 rebounds, 8 blocks, 51 steals, 14 assists, 59 take overs, 43 fouls

Anna McLaughlin, 85 2-pointers, 3 3-pointers, 43 free throws, 215 points, 98 rebounds, 14 blocks, 20 steals, 4 assists, 62 take overs, 41 fouls

Kendra Johnson, 4 2-pointers, 8 points, 19 rebounds, 4 steals, 16 take overs, 13 fouls

Courtney Stegman, 14 2-pointers, 1 3-pointer, 9 free throws, 38 points, 19 rebounds, 4 steals, 16 take overs, 13 fouls

Courtney Leach, 55 2-pointers, 13 free throws, 123 points, 87 rebounds, 16 steals, 6 assists, 34 take overs, 32 fouls.

Team totals: 328 2-pointers made, 935 attempted. 51 3-pointers made, 163 attempted; 150 free throws make, 333 attempted, 857 total points; 539 total rebounds, 24 blocks, 160 steals, 45 assists, 347 take overs, 246 fouls.

North Platte Valley Sportsman's Club Meeting

The North Platte Valley Sportsman's Club will hold a meeting at 7:00 p.m. on March 19th.

Bowling Bags League

The Bowling Bags League results for the week of February 27th were as follows:

High Game:
Joan Larsen - 204
Karla Eddie - 197
Belinda Daly - 194

High Series:
Belinda Daly - 570
Cindy Seitler and Joan Larsen- 521
Karla Eddie - 519

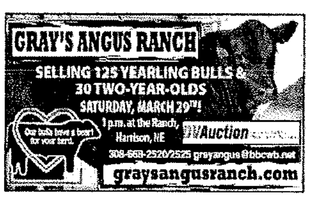
USBC Awards:
Joan Larsen - 500 series
Ashley Pelster - 150 game
Barb Shaffer - 175 game
Kris Springer - 150 game and 400 series

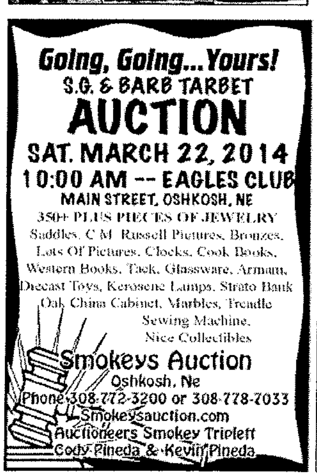
Results for Bowling Bags for week of 3/7:

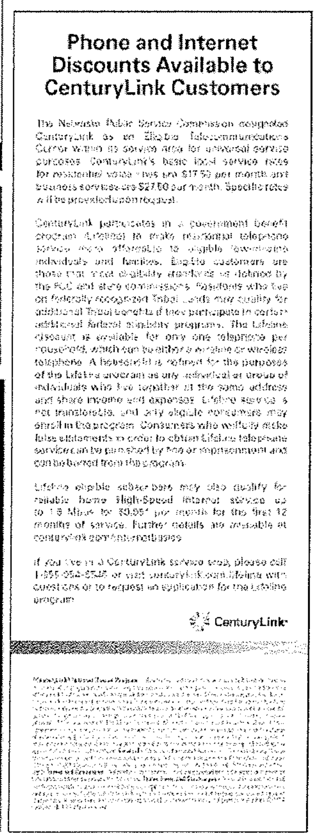
High Game
Ashley Pelster - 194
Diane Larimer - 188
Deb Jasnoch – 187

High Series
Lori Wortman - 517
Diane Larimer - 491
Belinda Daly - 484

USBC Awards
Ashley Pelster - 175 Game, 75 pins over and 400 series







Legal Notices

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NOTICE OF ORGANIZATION

NOTICE IS HEREBY GIVEN that The Racquet Grange & Hunting Preserve, LLC, a Nebraska limited liability company, is organized under the laws of the State of Nebraska, with its designated office at 9091 Road 193, Lewellen, Nebraska, 69147. The Company's initial designated agent for service of process is Michael J. McQuillan at 201 East 2nd Street, Suite B, P O Box 478, Ogallala, Nebraska 69153. The general nature of its business is to engage in and to do any lawful act concerning any and all lawful business for which a limited liability company may be organized under the laws of Nebraska. The limited liability company was organized and commenced on February 13, 2014, and the period of the Company's duration is perpetual. The affairs of the Company shall be conducted by its Members in proportion to their contribution to the capital of the Company, as adjusted from time to time, to reflect additional contributions or withdrawals by the Members.

The Racquet Grange &
Hunting Preserve, LLC

Michael J. McQuillan
McQuillan & Wendell,
P.C., L.L.O.
PO Box 478
Ogallala, NE 69153
(308) 284-4058

Pub. February 27, March 6 and 13, 2014

NOTICE

IN THE MATTER OF THE ESTATE OF LADONNA M. FULLER, Deceased. Case Number PR14-1. Notice is hereby given that on February 21, 2014, in the County Court of Garden County, Nebraska, Montie Fuller, whose address is 20 S Sheridan, North Platte, NE 69101, has been appointed as Personal Representative of this estate. Creditors of this estate must file their claims with this Court on or before April 28, 2014, or be forever barred.

Martin J. Troshynski #19385
Attorney at Law
PO Box 906
North Platte, NE 69103-0906
(308) 534-4837

Pub. February 27, March 6 and 13, 2014.

NOTICE TO BIDDERS

Sealed bids will be received by the Nebraska Department of Roads (NDOR) Operations Division, 5001 So 14th St., Lincoln NE, 68512 until 3:00 P.M. CDT on March 26, 2014. At that time, bids from pre-qualified contractors will be publicly opened and read for the services of Noxious Weed Spraying on NDOR right of-way in the following counties of Nebraska. Box Butte, Cheyenne, Deuel, Garden, Kimball, & Scotts Bluff.

Those interested in bidding on this proposal can obtain a bid package and
Prequalification information by accessing web site:
http://www.transportation.nebraska.gov/operations/procure/

If any questions, please contact Gloria Ryken at (402) 479-4356

Pub. March 6 and13, 2014

SEVERE WEATHER SPOTTER TRAINING
Wednesday,
March 26th, 2014
7:00 – 9:00 PM
Lewellen Fire Hall
211 Main St, Lewellen NE

The National Weather Service Staff from North Platte will host the training, in conjunction with Region 21 Emergency Management, to prepare for the upcoming severe weather season. Attendees are taught the basics of thunderstorm development, storm structure, the various features to look for in severe weather, and where to find those features. What, when, and how to report severe weather information is also covered. The public is welcome and there is no cost to attend.

Pub. March 13 and 20, 2014

NOTICE OF PUBLIC HEARING FOR PUBLIC TRANSPORTATION BUS BARN

Notice is hereby given that a public hearing will be held at the Garden County Courthouse Court Room at 611 Main Street, Oshkosh, Nebraska 69154 at 10:00 a.m. on March 31st, 2014 for the purpose of considering the purchase of Garden County Transportation Bus Barn, a project for which financial assistant is sought from the Federal Transit Administration, pursuant to the Federal Transit ACT (FTA), generally describes as follows.

Description of Project

Purchase of building and renovation for storage of the Transportation Bus and central location pick up area.

General Public

The Garden County Public Transportation will accommodate the general public.

At the hearing, the Garden County Public Transportation will afford an opportunity for interested persons or agencies to be heard with respect to the purchase of Garden County Transportation ADA Small bus. Interested persons may submit orally or in writing, evidence and recommendations with respect to the project.

A copy of the application for the Vehicle & Equipment Purchase Application is available for public inspection at the Garden County Clerk's office, 611 Main Street, Oshkosh, NE 69154 during normal hours.

Becky Hunt
Garden County
Transportation Administrator

Pub. March 13, 20, and 27, 2014

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Advertise: Let everyone know what service or supply you have to offer.