



STATE OF NEBRASKA
Office of the Attorney General

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JON BRUNING
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NATALEE J. HART
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September 22, 2014

Jerry Quick
PO Box 13
Ogallala, NE 69153

Re: *File No. 14-M-114; Ogallala Public Schools Board of Education;
Complainant Jerry Quick*

Dear Mr. Quick:

This letter is in response to your correspondence received by us on June 16, 2014 in which you requested that this office investigate alleged violations by the Ogallala Public Schools Board of Education (the "Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2008, Cum Supp. 2012, Supp. 2013) on April 21, 2014. In accordance with our normal procedures, we requested a response from the Board after we received your complaint, and we subsequently received a response from Tim W. Thompson, attorney for the Board. We have now had an opportunity to review your allegations and the Board'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, the audio file you sent of the April 21, 2014 meeting, and the response from the Board. Your Open Meetings Act concerns relate to a meeting of the Board held on April 21, 2014, and concerns you have relating to the Building and Grounds Committee. You make two primary allegations. First, you complain that you were not permitted to ask questions of the Board during the meeting. Second, you believe the Building and Grounds Committee to be in violation of the Open Meetings Act, as your position is that this committee is taking action on behalf of the Board as a whole without holding meetings in compliance with the Open Meetings Act. The Board has denied each of your allegations.

ANALYSIS

Public Participation at Meetings

You first complain that the Board would not answer questions posed by you to its members at the April 21, 2014 meeting. Neb. Rev. Stat. § 84-1412 provides that the public has the right to attend and speak at meetings of public bodies. However, a public body may “make and enforce reasonable rules” as to public participation, including a requirement that the public may address the Board only during a specially designated “public comment” time during the meeting. “A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.” § 84-1412 (2).

Through the years, our office has developed a number of guidelines which we believe govern the public’s right to speak at open meetings of public bodies. One of those guidelines, applicable here, is that public bodies in Nebraska generally operate as a form of representative democracy. See *Distinctive Printing and Packaging Company v. Cox*, 232 Neb. 846, 443 N.W.2d 566 (1989); *State ex rel. Strange v. School District of Nebraska City*, 150 Neb. 109, 33 N.W.2d 358 (1948). That is, Nebraska citizens elect individuals to represent them on various boards, commissions, etc., rather than having all who are present at a particular meeting of a public body act as members of that body. Therefore, when members of the public attend meetings of public bodies in Nebraska, they most often attend as observers, *not members of the body itself*, and they have no right, apart from periods set aside for public comment, to engage in the body’s debate, to question members of the body, to comment on particular decisions, or to vote on the issues at hand. Those latter rights go to the members of the public body, who ran for and were elected to office. While any particular public body may certainly choose to allow citizens to participate in its meetings, citizens attending a meeting of a particular public body are not members of that body.

In addition there is no absolute right for members of the public to address a public body at any given meeting or on any given agenda item, so long as there is some time at some meetings set aside for public comment. Public bodies can rightfully refuse to allow public comment at a given meeting, or as they consider a particular agenda item. The Board is not required to allow members of the public to speak at a particular open meeting, or every open meeting, provided that the Board allows the public to address them at some meetings. Additionally, the public comment period is not intended to be a question and answer session with members of the public body.

You do not complain that you have never been allowed to address the Board. In fact, our review of the audio you provided of the April 21, 2014 meeting shows you were permitted to address the Board for over 13 minutes at the beginning of the meeting. You asked several questions of the Board members. The Board members did not answer most of your questions, referring you instead to the appropriate individuals and offering to have discussions with you on an individual basis outside the Board meeting as to your concerns. You refused these offers. The Board is not required to answer

any questions posed to it during an Open Meeting. The Board has not violated the Open Meetings Act with respect to this portion of your complaint.

Building and Grounds Committee

You next allege that the Building and Grounds Committee is subject to the Open Meetings Act, but is not following the provisions of the Act by holding public meetings. Neb. Rev. Stat. § 84-1409 (2011) defines “public body” for purposes of the Open Meetings Act.

(1)(a) Public body means (i) governing bodies of all political subdivisions of the State of Nebraska, (ii) governing bodies of all agencies, created by the Constitution of Nebraska, statute, or otherwise pursuant to law, of the executive department of the State of Nebraska, (iii) all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law, (iv) all study or advisory committees of the executive department of the State of Nebraska whether having continuing existence or appointed as special committees with limited existence, (v) advisory committees of the bodies referred to in subdivisions (i), (ii), and (iii) of this subdivision, and (vi) instrumentalities exercising essentially public functions; and

(b) Public body does not include (i) subcommittees of such bodies unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of their parent body, except that all meetings of any subcommittee established under section 81-15,175 are subject to the Open Meetings Act, and (ii) entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders.

The full Board is certainly a public body, and any subcommittee thereof which contains a quorum of the full Board would also be a public body. It is our understanding that the Board is composed of six members, and that a majority of the members constitute a quorum.¹ In other words, a quorum is reached by the attendance of four Board members. However, the Building and Grounds Committee at issue here is made of three Board members and therefore does not contain a quorum of the parent body. As a result, the Building and Grounds Committee is only a public body if it is a subcommittee “holding hearings, making policy, or taking formal action on behalf of the parent body.”

You state that this committee is “obviously making decisions on the [Board’s] behalf,” but provide us with no evidence of any action the subcommittee has taken on behalf of the parent body. The Board disagrees with your assertion. The Board

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

indicates the Building and Grounds Committee was formed to follow the progress of construction and renovation currently being performed at one of Ogallala's elementary schools. The Board has stated to us that the "subcommittee does not make decisions regarding the project, does not approve bids, and takes no formal action with regard" to the construction project. The subcommittee relays information to the school superintendent, and well as to the Board during Open Meetings for which the project appears on the agenda.

As the Building and Grounds Committee is made up of less than a quorum of the full Board, it is subject to the Open Meetings Act only if it is holding hearings, making policy, or taking formal action on behalf of the parent body. We have no evidence that any of that is occurring. Therefore, it is our conclusion that this committee is not required to adhere to the Open Meetings Act and we find no violation of the Open Meetings Act related to this portion of your complaint.

CONCLUSION

For the reasons stated above, we do not believe that the Board has violated the Open Meetings Act with respect to your complaints. 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

A handwritten signature in black ink, appearing to read "Natalee J. Hart". The signature is fluid and cursive, with a long horizontal stroke at the end.

Natalee J. Hart
Assistant Attorney General

Cc: Tim W. Thompson

02-437-30