

STATE OF NEBRASKA
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October 19, 2010

Lonnie Peters, Chairperson
Keith County Board of Commissioners
511 North Spruce, Suite 102
Ogallala, NE 69153

RE: *File No. 10-M-139; Keith County Board of Commissioners; Anonymous*

Dear Mr. Peters:

We are writing in response to an anonymous letter we received on October 8, 2010, in which the writer alleges that the Keith County Board of Commissioners (the "Board") violated the Open Meetings Act¹ when it went into closed session during its meeting on September 29, 2010. Specifically, the letter reads:

To Whom It May Concern:

I'm writing with regard to the September 29th meeting of the Keith County Board of Commissioners during which the County Board went into a closed session supposedly to discuss "litigation". A tape of this meeting is available online at the KOGA radio website, the link is as follows:

<http://www.930koga.com/pages/podcasts.htm>

Please go to part 9 about 47 seconds into the tape. Please take the time to listen to this so that you have an idea of what is going on here.

Thank you.

For your information, we listened to the tape at issue. We also reviewed the agenda and meeting minutes which were provided to us by the county clerk, Sandra

¹ Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2008, Supp. 2009).

Olson. We note that the Board continued to discuss, at length, the propriety of the closed session after it had approved a motion to close the meeting "to discuss potential litigation." Eventually, the Board articulated that the Board would be discussing the county's audit report and its focus on the county attorney, statements made by the State Auditor, law enforcement implications and potential Board liability. Upon review, we believe that these topics were appropriate for a closed session.

However, it appears that the Board failed to comply with the Open Meetings Act with respect to the *technical requirements* relating to closed sessions. In that regard, Neb. Rev. Stat. § 84-1410 of the Act provides, in pertinent part:

(1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. *The subject matter and the reason necessitating the closed session shall be identified in the motion to close.*

* * *

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. *If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session.* The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session.

(Emphasis added.) In the present case, Mr. Teaford's motion did not include the reason for the closed session—i.e., protection of the public interest or the prevention of needless injury to the reputation of an individual. Additionally, the statute requires the presiding officer to restate the limitation of the subject matter of the closed session once a motion to close is approved by the public body. That too was not done. As a result, the Board failed to meet the technical requirements relating to closed sessions in violation of the Act.

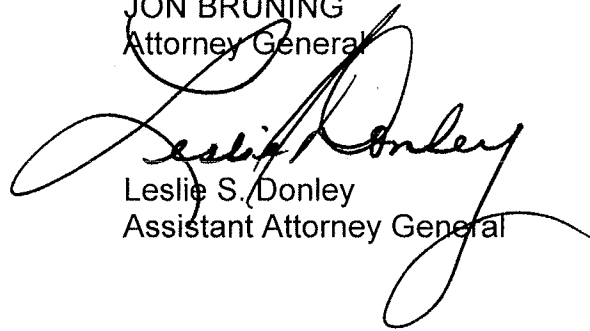
Consequently, we would ask the Board to be particularly careful when it goes into closed session in the future. This request relates to both the propriety of the subject matter and compliance with the technical requirements. While the various requirements in § 84-1410 may seem insignificant, they are nevertheless provisions of state law, and adherence to them is imperative.

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Please contact the undersigned if you have any questions or comments regarding the foregoing.

Sincerely,

JON BRUNING
Attorney General

A handwritten signature in black ink, appearing to read "Leslie S. Donley". The signature is fluid and cursive, with a large loop at the end.

Leslie S. Donley
Assistant Attorney General

cc: Sandra Olson
County Clerk

49-541-30