



STATE OF NEBRASKA
Office of the Attorney General

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NATALEE J. HART
ASSISTANT ATTORNEY GENERAL

June 17, 2014

John A. Wells, President
Omaha Police Officers' Association
13445 Cryer Ave.
Omaha, NE 68144-2500

Re: *File No. 13-M-106; Omaha City Council; Complainant John Wells,
Omaha Police Officers' Association*

Dear Mr. Wells:

This letter is in response to your correspondence of May 2, 2013 and May 5, 2013, in which you requested that this office investigate alleged violations by the City of Omaha City Council (the "City Council") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2008, Cum. Supp. 2012). In accordance with our normal procedures, we requested a response from the City Council to your complaint. We have received the City Council's response, through Paul D. Kratz, City Attorney. We have now had an opportunity to review all the materials in this matter, and our conclusions regarding your Open Meetings complaint are set out below.

FACTS

Our understanding of the facts related to your complaint is based upon both your correspondence and the City Council's response. Your Open Meetings Act complaint appears to be that the City Council may have authorized action outside of an open meeting by Mark McQueen, the City's labor negotiator, regarding the definition of "pension eligible," as it was found in the proposed fire union collective bargaining agreement.

The remainder of your letter alleges "strong circumstantial evidence" that "someone on the City Council" directed Mr. McQueen to change the definition of "pension eligible;" that whomever that person may be exceeded his or her authority in doing so; and that if the City Council's negotiating committee directed Mr. McQueen, it exceeded its authority. However, these allegations fall outside the purview Open Meetings Act. That Act does not address the authority of members of a public body, nor does it address the limits of authority of a subcommittee. This office has no general supervisory authority over governmental subdivisions in Nebraska, including the City of

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Omaha. Consequently, all of these other matters are outside the enforcement authority of this office and will not be addressed herein.

ANALYSIS

Your Open Meeting complaint appears to be that the City Council may have met and authorized action by Mr. McQueen outside an open meeting. However, we have no documentation which supports this allegation. Additionally, the City Council denies that any member, or group of members, of the City Council, met with or instructed Mr. McQueen regarding the definition of "pension eligible." 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. The Open Meetings Act does not require the City Clerk to have received documentation and made it a part of the City Council's official record.

You have made a general allegation that you believe the City Council, as a whole or through one of its members, may have authorized Mr. McQueen to change the definition of "pension eligible" outside the confines of an Open Meeting. The Open Meetings Act does not address the authority of individual members of a public body. It does prohibit a quorum of a public body from discussing public business, forming policy, or taking action, without satisfying the requirements of the Open Meetings Act. However, we have no details regarding any meetings occurring off the record, such as dates and those in attendance. The City Council denies any such meeting occurred. It affirmatively states that a member of the City Attorney's office organized a meeting with Mr. McQueen, City Labor Relations Director Steve Kerrigan, Fire Union attorney John Corrigan and representatives of the Fire Union to discuss the parties' intentions as to the proposed collective bargaining agreement and the meaning of the term "pension eligible." No members of the City Council were present. The group that met did not constitute a "public body" under the Open Meetings Act. Based on these facts, we cannot find a violation of the Open Meetings Act with respect to your complaint.

CONCLUSION

For the reasons stated above, we cannot find any violations of the Open Meetings Act by the City Council. If you disagree with the analysis we have set out

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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 the first name being the most prominent.

Natalee J. Hart
Assistant Attorney General

Cc: Paul D. Kratz, Omaha City Attorney
Theresia Urich, Douglas County Attorney's Office
Michael P. Dowd, Dowd Howard & Corrigan

02-422-30