

## 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

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.

Brenda Tophoj June 20, 2014 Page 2

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 13<sup>th</sup>, 20<sup>th</sup> and 27<sup>th</sup>. 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 31<sup>st</sup>, 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

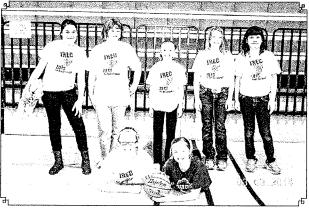
Assistant Attorney Genera

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 bas-ethall team that was not available at the time we pub-

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

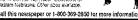
### Season Stats for the North Platte Valley Lady Eagles

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

Alisha Heelan, 10 2-pointers, 13 free throws, 3 points, 27 rebounds, 1 foul Mikay Want, 3 rebounds, 1 foul points, 37 pointers, 13 pointers, 14 pointers, 13 pointers, 14 pointers, 15 poin

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# Sportsman's Club Meeting

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

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### 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 proceas is Michael J. McQuillan at 201 East 2<sup>res</sup> Street, Suite B, P O Box 478, Ogalala, 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 properbal. The affairs of the Company's duration is properbal. The affairs of the Company's duration is one of the Company and the continuous of the control of the Company and the continuous of the control of the Company and the continuous of the control of the Company and the continuous of the control of the Company and the continuous of the control of the Company and the continuous of the control of the Company and the control of the control of the Company and the control of the Company and

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, luss been appointed as Personal Representative of this estate. Creditors of this estate must
file their claums with this Court on or before April 28,
2014, or he forever barred.

Martin J. Troshynski #19385

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

NOTICE TO BIDDERS

Sealed bids will be received by the Nebracka Department of Roads (NDOR) Operations Division, 5001 36
14th 8t., 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 Nebracka. Box Butte, Cheyerine, Deuel, Garden, Kimball, & Scotta 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/oper-

http://www.transportation.nebraska.gov/oper-

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

SEVERE WEATHER SPOTTER TRAINING Wednesday. March 26th, 2014 7:00 - 9:00 PM

T: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 vanious 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 Administration, pursuant to the Federal Transit Administration bus on the Polyment of Project Purchase of building and renovation for atorage of the Transportation Bus and central location pick up area.

the Transportation Bus and central tocation 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 hearing, the Garden the special public. As the second of the second properties of the process 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, Osikosh, NE 69154 during normal hours.

Becky Hunt Garden County Transportation Administrator

Pub. March 13, 20, and 27, 2014

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