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Office of the Attorney General

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December 15, 2016

Franz Trumler
351 Valley Road
Boelus, NE 68820

RE: *File No. 16-M-131; Centura Public Schools Board of Education;
Complainant Franz Trumler*

Dear Mr. Trumler:

This letter is in response to your complaint in which you have requested that this office investigate alleged violations of the Nebraska Open Meetings Act (the "Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2016), by the Centura Public Schools Board of Education ("Board"). As is our normal practice with such complaints, we forwarded a copy of your complaint and its supporting documentation to the public body which is the subject of the complaint. We received a response from the attorney for the Board, Tim W. Thompson, and have now had an opportunity to review in detail your complaints, all of the accompanying documentation, and the Board's response. Our conclusions in this matter are set forth below.

FACTS

Our understanding of this matter is based upon your complaint and the response we received from the Board. We have identified the following Open Meetings Act complaints, which will each be addressed herein:

- (1) As to the June 21, 2016 meeting of the Board, you allege:
 - a. members of the public were allowed only to comment during the public comment portion of the meeting, unless they had requested to be on the agenda at least 24 hours before the meeting;
 - b. the minutes of the meeting do not reflect the public input provided during the meeting, even for those individuals who spoke as an agenda item outside the public comment period; and
 - c. the Board took a vote in the closed session conducted during that meeting.

- (2) As to the July 11, 2016 meeting, you make the following allegations:
 - a. the public is allowed to comment only during public comment period and during hearings of the Board;
 - b. the Board adjourned immediately after a closed session; and
 - c. the Board took action during its closed session at this meeting.
- (3) As to meetings of the Board, in general, you allege that the notice of meetings is insufficient, as it is published only in the *Grand Island Independent* and not physically posted elsewhere or posted on the school district's website.

In your complaint, in addition to specific allegations related to the Act, you also include a number of exhibits which do not relate directly to your complaints or which appear to be authored by additional individuals who have not filed a complaint with this office. As our office lacks the resources to investigate generalized allegations which are not accompanied by specific complaints of, and documentation relating to, violations of the Open Meetings Act, we will not respond to these general allegations herein. Additionally, any allegations related to the Board which occurred more than one year prior to the date of your complaint are outside the statute of limitations for void or voidable actions of a public body found as found in Neb. Rev. Stat. § 84-1414.

We also note that your complaint asks us to review a number of allegations which are not related to the Open Meetings act, including NSAA complaints, "lies" of the Centura Superintendent, acceptance of gifts by school officials, the tax levy of the school district, generalized "patron concerns of legal issues," a dispute as to the salary of the superintendent, and issues relating to an audit of the school district. However, this office has no general supervisory authority over governmental subdivisions in Nebraska, including the Board. We have enforcement duties related to the Nebraska Open Meetings Act and the Nebraska Public Records Statutes, but do not have authority over any of these other topics. As such, we will not discuss these portions of your complaint.

ANALYSIS

Neb. Rev. Stat. § 84-1408 (2014) of the Nebraska Open Meetings Act provides:

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

The primary purpose of the open meetings law is to ensure that public policy is formulated at open meetings. *Marks v. Judicial Nominating Comm.*, 236 Neb. 429, 461

N.W.2d 551 (1990). The Nebraska open meetings laws are a statutory commitment to openness in government. *Wasikowski v. The Nebraska Quality Jobs Board*, 264 Neb. 403, 648 N.W.2d 756 (2002); *Grein v. Board of Education of the School District of Fremont*, 216 Neb. 158, 343 N.W.2d 718 (1984).

Notice of Meetings

We will first address your allegation that the notices of meetings of the Board are insufficient, as notice is published only in the *Grand Island Independent* and physically posted in the district or published on the district's website. The Open Meetings Act requires a public body to give "reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes," which is to include either the agenda, or notice of where the agenda is available for public inspection. Neb. Rev. Stat. § 84-1411 (1) (2014). The agenda must be kept "continually current" and may not be altered, except for items of an emergency nature, within 24 hours of the meeting. *Id.* "Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting." *Id.* The Open Meetings Act contains no specific requirements as to where notice may or may not be placed, or whether it must be physically posted in the geographic area served by the public body. In this case, the Board has determined that it will provide notice via publication in the *Grand Island Independent*, and implemented a policy during its January 11, 2015 meeting to advertise via this newspaper. It is not in violation of the Open Meetings Act in so doing or by choosing not to post notice in other places. There is no violation of the Act as to this portion of your complaint.

Public Comment

You complain as to the June 21, 2016 and July 11, 2016 meetings that the public is allowed to comment only during the public comment agenda item, or during hearings of the Board, unless the individual has requested to be on the agenda at least 24 hours before the meeting. Neb. Rev. Stat. § 84-1412 (2014) 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 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. A public body is not required to allow members of the public to speak at a particular open meeting, or every open meeting, provided that the public body allows the public to address them at some meetings. The public body is not required to allow a citizen to speak during any agenda item other than one designated as "public comment."

As to public comment during Board hearings, including Board policy and budget hearings, the Open Meetings Act does not address the way in which a public body conducts public hearings. While a public hearing may be held during the Board's regular meeting, the Open Meetings Act does not control hearing procedure and is silent regarding comment during public hearings. Consequently, we will not further address this portion of your complaint.

The Centura School Board is not in violation of the Open Meetings Act as to your complaint concerning the ability of the public to comment during meetings.

Minutes

Related to your complaint on public comment periods, you also complain that the minutes of the June 21, 2016 meeting do not reflect the public input provided during that meeting. The Open Meetings Act requires a public body to "keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed." Neb. Rev. Stat. § 84-1413 (2016). The Open Meetings Act does not require a public body to transcribe the minutes of its meetings, nor does it require the minutes to provide detail about the public comment period or other public input, other than to reflect that public comment occurred at a meeting. The Board's minutes are only required to show the "substance of all matters discussed" by the Board, not by members of the public. There is no violation of the Open Meetings Act with respect to this portion of your complaint.

Closed Session

Your final complaints concern the closed sessions held on June 21, 2016 and July 11, 2016 and the actions of the Board during those sessions. You believe that the Board took action during the closed sessions on these dates and complain that on July 11 the Board adjourned immediately following its closed session.

Neb. Rev. Stat. § 84-1410 (2014) of the Open Meetings 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. Closed sessions may be held for, but shall not be limited to, such reasons as:
 - (a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;
 - (b) Discussion regarding deployment of security personnel or devices;
 - (c) Investigative proceedings regarding allegations of criminal misconduct;
 - (d) Evaluation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting;

* * * *

- (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. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include

negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

The minutes of the meeting held June 21, 2016 reflect that a closed session was held near the end of the meeting for "patron concerns and personnel." Following the approximately 90 minute closed session, the Board adjourned its meeting. You allege "[i]n th[i]s executive session as in all executive sessions, the vote was taken during the session and the public was not informed of the decision." You appear to believe that the Board makes decisions in closed session in violation of the Open Meetings Act, but do not specify what you believe the vote to have been regarding or why you believe this to be true. The Board denies that any action was taken in closed session. In the absence of clear evidence to the contrary, we must assume that the Board is accurately representing itself and acting in good faith. Without any evidence that the Board took action during a closed session on June 21, 2016, we cannot find that the Board has violated the Open Meetings Act with respect to this portion of your complaint.

As to the July 11, 2016 meeting, you have two complaints regarding the closed session held on that date. First, you complain that the Board adjourned immediately after a closed session; and second you again complain that that Board took action during its closed session at this meeting. As to your first complaint, it would not be a violation of the Open Meetings Act for a public body to adjourn immediately following a closed session. However, in this instance, that did not occur. The minutes from the July 11 Board meeting show that the Board entered into closed session to discuss agenda item XI.R, at approximately 8:54 p.m. The Board returned from closed session at 10:26 p.m. and continue its meeting with a number of additional items discussed in open session, including agenda items X through XII, adjourning the meeting at 11:35 that night. There is no violation of the Act as to this portion of your complaint.

Your second allegation as to the July 11 meeting is that the Board took action during its closed session to "rehire" the superintendent. The closed session on this date was for "discussion of Superintendent Evaluation and Contract." The Board states that the Superintendent's job performance was indeed discussed during the closed session. However, as the Superintendent has a contract of employment through June 30, 2018, no action was needed or taken on July 11, 2016 as to this contract. Your assertion that the Board took action during closed session on this date lacks supporting evidence. Again, as the Board denies your allegation and we see no evidence that action was taken during closed session, we cannot find any violations of the Open Meetings Act as to this portion of your complaint.

Supporting materials

We have reviewed the remainder of the materials you submitted, including all exhibits. We found no violations of the Open Meetings Act in any of these materials.

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CONCLUSION

For the reasons stated above, we conclude that the Board has not violated the Open Meetings Act as to the complaints filed by you. Since we have determined that no violations have occurred, we are closing this file. If you disagree with our analysis, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON
Attorney General

A handwritten signature in blue ink, appearing to read "Natalee J. Hart", with a stylized, cursive script.

Natalee J. Hart
Assistant Attorney General

cc: Tim W. Thompson

02-642-29