



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
ATTORNEY GENERAL

RYAN D. BAKER
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July 16, 2024

Via email: [REDACTED]
LaTonya Davis

RE: *Open Meetings Matter Involving Nebraska Equal Opportunity Commission, et al.*
Our File No. 20241119

Dear Ms. Davis:

This letter is in response to your complaint received by our office on June 14, 2024, in which you allege violations of the Open Meetings Act ("Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2022), amended 2024 Neb. Laws LB 43 and 287, by the Nebraska Equal Opportunity Commission ("NEOC") and various state and federal agencies, state and federal officers, and nongovernmental entities. Your complaint pertains to a meeting held by the NEOC on January 19, 2024, in which it found no reasonable cause to pursue your Nebraska Fair Housing Act complaint. We have considered your complaint under the Act, and our conclusions are set forth below.

Allegations Unrelated to the Open Meetings Act

As a preliminary matter, you raise several claims under several state and federal statutes other than the Act. These statutes are outside the bounds of this office's role in reviewing open meetings complaints and enforcing the Act. Our authority in such matters is limited to claims concerning a public body's alleged failure to comply with its obligations under the Act. We are unable, therefore, to address any allegations contained in your complaint not related to the Act.

Agencies, Entities, and Individuals Other Than the NEOC

In addition to the NEOC, you name several state and federal agencies, state and federal officers, and other nongovernmental entities as respondents to your complaint. None of these individuals and entities are connected with the NEOC's resolution of your Fair Housing Act complaint at its meeting on January 19, 2024. Consequently, we will not address your allegations regarding these respondents.

Nebraska Equal Opportunity Commission

Your primary claims concern the NEOC meeting held on January 19, 2024, during which the NEOC commissioners determined that there was no reasonable cause to pursue your Fair Housing Act complaint. You raise several allegations regarding the meeting, including an improper roll call vote, ex parte communications between commissioners and other NEOC employees, and improper determinations based on grounds you believe to be contrary to the evidence in the NEOC's possession. In considering your complaint, we have further reviewed the meeting minutes and the audio recording posted to the NEOC's website.

A public entity is required to comply with the Act only when it is a "public body" described in § 84-1409(1). "Public bodies" under the Act generally include "all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law." See § 84-1409(1)(a)(iii). However, this "does not include . . . entities conducting judicial proceedings unless a court or other judicial body is exercising rulemaking authority, deliberating, or deciding upon the issuance of administrative orders." See § 84-1409(1)(b)(ii). The judicial functions of certain public bodies are distinct from those bodies' rulemaking authority, and Nebraska law mandates compliance with the Act's requirements only where such bodies exercise their rulemaking authority. See *McQuinn v. Douglas Cty. Sch. Dist. No. 66*, 259 Neb. 720, 731-32, 612 N.W.2d 198, 206 (2000) (finding that particular school district board proceedings "were limited to the exercise of a judicial function" and public meeting laws did not apply to meeting). A public body "exercises a judicial function if it decides a dispute of adjudicative fact or if a statute requires it to act in a judicial manner." See *id.*, 259 Neb. at 731, 612 N.W.2d at 206.

The NEOC is a "public body," established in Neb. Rev. Stat. § 48-1116 (2021) and encompassed in § 84-1409(1)(a)(iii). However, the Nebraska Supreme Court has stated that the NEOC "exercises quasi-judicial power as distinguished from legislative power [and] . . . merely determines rights of the parties under" Nebraska law. See *Snygg v. City of Scottsbluff Police Dept.*, 201 Neb. 16, 17-18, 266 N.W.2d 76, 77-78 (1978) (discussing determination of parties' rights under Nebraska Fair Employment Practice Act). Our office has likewise previously determined that NEOC public hearings are judicial in nature. See Op. Att'y Gen. No. 184 (January 30, 1984).

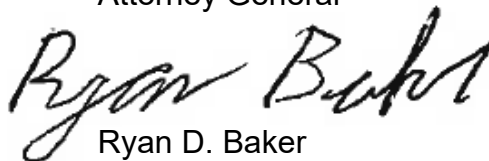
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To the extent your complaint alleges plausible violations of the Act, we conclude that the Act was inapplicable to the NEOC proceedings held on your Fair Housing Act complaint. The Fair Housing Act requires the NEOC to determine whether “reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.” See Neb. Rev. Stat. § 20-333(1)(a)-(c) (2022). In doing so, the NEOC exercises a quasi-judicial function, rather than its rulemaking authority, in determining whether to “issue a charge on behalf” of the complainant or to “promptly dismiss the complaint.” See *id.* Therefore, the NEOC could not have violated the Act, as it is inapplicable to the proceedings referred to in your complaint.

Based on the foregoing, and to the extent your complaint raises claims under the Open Meetings Act, the NEOC proceedings relating to your Fair Housing Act complaint were not subject to the Act’s requirements. No further action by this office is therefore warranted in this matter, and we are closing this file. If you disagree with the analysis set forth above, you may wish to consult with a private attorney to see what other remedies, if any, are available to you under the Open Meetings Act or the other statutes cited in your complaint.

Sincerely,

MIKE HILGERS
Attorney General

A handwritten signature in black ink, appearing to read "Ryan Baker", written in a cursive style.

Ryan D. Baker
Assistant Attorney General