

STATE OF NEBRASKA
Office of the Attorney General

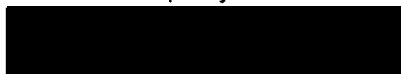
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JON BRUNING
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June 20, 2014

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.

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 13th, 20th and 27th. 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 31st, 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.

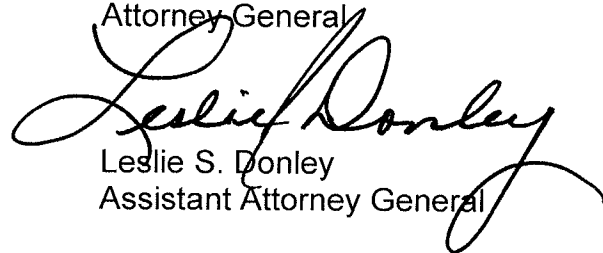
In the present case, it is unnecessary to apply these principles to the proceeding held on March 31, 2014. Mr. Pierce has represented to us that this was a public hearing to elicit public testimony on the purchase of a bus barn, not a meeting of the Garden County Board of Commissioners. The published 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 General

Attachment

c: Philip E. Pierce

