

STATE OF NEBRASKA
Office of the Attorney General

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JON BRUNING
ATTORNEY GENERAL

NATALEE J. HART
ASSISTANT ATTORNEY GENERAL

October 30, 2014

Gary Aldridge
[REDACTED]

Re: *File No. 14-M-128; Lancaster County Board of Commissioners;
Complainant Gary Aldridge*

Dear Mr. Aldridge:

This letter is in response to your correspondence received by us in which you requested that this office investigate alleged violations by the Lancaster County Board of Commissioners (the "Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2008; Cum. Supp. 2012; Supp. 2013). In accordance with our normal procedures, we requested a response from the Board after we received your complaint. We subsequently received a response from the Board in which they provided the minutes of the meeting at issue and a copy of their "Guidelines for Public Participation at Meetings of the Lancaster County Board of Commissioners." We note that the Board did not provide any facts or analysis related to your complaint. We have now had an opportunity to review your allegations and the documentation related to the meeting about which you complain, and our conclusions are set out below.

FACTS

Our understanding of the facts in this case is based upon your correspondence. We have identified two Open Meeting Act complaints made by you.

- (1) The Agenda of the September 26, 2014 meeting of the Board was not formally adopted, approved, amended or changed at the meeting; and
- (2) You were required to swear an oath before providing public comment during the budget hearing held during the September 26 meeting.

ANALYSIS

Agenda

You have first complained that the Board “took no formal action with respect to the agenda (adopt, approve, amend, or change) at its September 26, 2014 meeting. The Open Meetings Act requires that a public body “give reasonable advanced publicized notice of the time and place” of its meetings, which shall include the agenda for the meeting, or a statement of where the agenda can be reviewed. Neb. Rev. Stat. § 84-1411 (2013). A public body must keep its agenda “continually current” and may not make changes to that agenda, other than those of an emergency nature, more than twenty-four hours before a scheduled meeting. The public body may alter an agenda at the public meeting only to include “items of an emergency nature.” *Id.* The Open Meetings Act makes no requirement that a public body take formal action as to its agenda, whether to adopt, approve, amend, or change it, during the public meeting. The Board is not in violation of the Open Meetings Act with respect to this portion of your complaint.

Oath to offer public comment

Your second complaint is that you were required to swear an oath in order to give public comment during the portion of the public meeting designated as a Public Hearing for the Lancaster County Proposed Budget for Fiscal Year 2014-2015. Neb. Rev. Stat. § 84-1412 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).

The portion of the meeting for which you offered comments was a public hearing on the county’s budget. The Open Meetings Act does not address the way in which a public body conducts public hearings. While in this case the public hearing on the budget was held during the Board’s regular meeting, the Nebraska Budget Act, Neb. Rev. Stat. §§ 13-501 through 13-513 controls the way in which the Board handles the notification of and hearing regarding its budget. The Open Meetings Act does not control the hearing concerning the budget and is silent regarding testimony during public hearings. 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 (Neb. Rev Stat. §§ 84-1407 through 84-1414) and the Nebraska Public Records Statutes (Neb. Rev. Stat. §§ 84-712 through 84-712.09).

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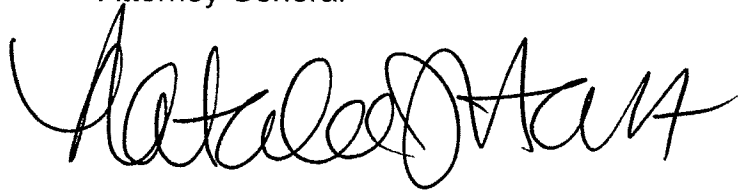
However, we do not supervise the Nebraska Budget Act or compliance therewith. In this instance, your complaint does not implicate the Open Meetings Act.

CONCLUSION

For the reasons stated above, we do not believe the Board has violated the Open Meetings Act. If you disagree with the analysis we have set out 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: Gwen Thorpe

02-455-30