



May 22, 2015

Hall County Board of Supervisors  
121 S. Pine St.  
Grand Island NE 68801

Re: Nebraska Open Meetings Act

Dear Members of the Board:

Our office has received citizen complaints in regards to the “emergency meeting” convened by Hall County for today. Today’s meeting violates the most basic precept of the Open Meetings Act, namely, the right of the public to “attend...and speak at meetings of public bodies.” Neb. Rev. Stat. §84-1412. No meeting may be convened without regular advance notice to the public. The purpose of this law is to ensure that citizens who want to participate in our government are not shut out of the course of government business and discourse.

The Open Meetings Act was created expressly to prohibit public bodies from holding secret or hurried meetings that in effect exclude the public. The purpose of the law is to limit government officials from acting in secret, in bad faith, or without adequate time to review and reflect upon important matters.

"Sunshine" laws such as open meetings statutes are a codification and express provision for the basic constitutional rights already held by citizens under the US Constitution. Those constitutional rights allow the press and public to have access—and the right to speak and participate. This right to speak out in a public meeting is drawn from the First Amendment. The right of citizens to attend meetings and thus hold public officials accountable for their actions is drawn from the Fourteenth Amendment. The Nebraska Supreme Court described the benefits and purposes of open meetings laws:

The Nebraska Public Meetings Laws are a statutory commitment to openness in government. As a result of open meetings, there will be development and maintenance of confidence, as well as participation, in our form of government as a democracy. The public can observe and within proper limits participate in discussions and deliberations of a public body...Government’s decision-making process, whether observed personally by the public or publicized by the media, can be examined and analyzed in terms of the effect on the lives of people. In this manner government may be accountable to the governed. *Grein v. Board of Education*, 216 Neb. 158, 163-164, 343 N.W.2d 718 (1984)

AMERICAN CIVIL  
LIBERTIES UNION of  
NEBRASKA

941 O ST. #706  
LINCOLN, NE 68508  
T/ 402.476.8091  
F/ 402.476.8135

OMAHA  
T/ 402.933.3635

LEGAL HELP LINE  
1.855.557.ACLU (2258)

[www.aclunebraska.org](http://www.aclunebraska.org)

According to news reports, some members of this board believe that the Unicameral vote on LB 268 (abolition of the death penalty) constitute an “emergency” permitting waiver or noncompliance with the Open Meetings Act. The circumstances are not what the Nebraska Supreme Court has defined as an emergency, which is “a sudden or unexpected happening; an unforeseen occurrence or condition.” *Steenblock v. Elkhorn Township Board*, 245 Neb. 722, 726 (1994). Courts are reluctant to find an “emergency” that waives the Open Meetings law—the few examples have been true emergencies such as extreme weather interfering with a meeting.

The bill in question was introduced on January 14, 2015. If this board felt there was a pressing need for action and debate on this topic, it has had nearly five months in which to conduct that business. Further, given the fact that at most this board can express an opinion—not take any binding or remedial action that benefits the county—the circumstances do not rise to the level of “an emergency.”

The law is clear: this board may not conduct business today because it is in clear violation of state law and constitutional principles. As the US Supreme Court has noted, “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373-374 (1976).

If this board goes forward with the meeting, any actions taken at the meeting will be void and the county could face civil liabilities. Any member of the public who wished to attend the meeting would have standing to sue and obtain attorney fees and costs for the violation of state law. Further, the county could face a civil rights lawsuit for damages as well as attorney fees and costs.

You should also be aware that Nebraska provides criminal penalties for public officials who violate the Open Meetings Act. Those penalties apply to every member of the board who conspired to create the illegal meeting—but also apply to any member who “attends or remains at a meeting knowing that the public body is in violation of the Open Meetings Act.” Neb. Rev. Stat. 84-1414(4).

As such, we have provided this letter to the Attorney General as well as the Hall County Attorney to review this matter for any potential criminal violations.

Govern yourselves accordingly.



Amy A. Miller  
Attorney at Law

cc: Hall County Attorney Jack Zitterkopf and Nebraska Attorney General Doug Peterson