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CHARLES M. PALLESEN, JR., 1937-2011

June 19, 2012

Mr. Dale A. Comer
Assistant Attorney General Chief, Legal Services Bureau
2115 State Capitol
P.O. Box 98920
Lincoln, Nebraska 68509-8920

Dear Mr. Comer:

I represent the Nebraska Press Association, and through the Association, its constituent members. I write to you on behalf of the Beatrice Daily Sun newspaper. Please consider this letter to be a petition made by the Daily Sun pursuant to Neb. Rev. Stat. § 84-712.03(2), requesting that the Attorney General review the matter described below to determine whether records may be withheld from public inspection or whether the Gage County Board of Supervisors has otherwise failed to comply with Nebraska's public record statutes.

Dr. Don Rice became Gage County's Medical Director in 2007 following a report that outlined deficiencies in ambulance service in the County. Dr. Rice's tenure as Medical Director was sometimes contentious and controversial. In a meeting held on May 25, 2012, the Gage County Board of Supervisors went into closed session for about 20 minutes to discuss a "personnel matter." Upon returning to open session, the Board announced it was accepting Dr. Rice's resignation. In an interview after the May 25, 2012, Supervisor's meeting, Supervisor Gary Lytle, who heads the Board's Emergency Management Services Committee, gave an interview to Daily Sun reporter Chris Dunker, in which he said:

"Dr Rice is ready to move on to other things," Lytle said. "I guess it's best to get it from Dr. Rice. Dr. Rice has done an excellent job for our county, we've come a long ways in our care. I think we're at a mutual point where it's time for us to — it's not

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P.O. BOX 510
AURORA, NE 68818
(402) 694-6314

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416 VALLEY VIEW DRIVE, SUITE 304
SCOTTSBLUFF, NE 69361
(308) 635-1020

330 SOUTH COLLEGE AVENUE
SUITE 300
FORT COLLINS, CO 80524-7162
(970) 221-2637

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moving in a new direction, and I'm not going to say looking for the next step because Dr. Rice knows a lot — he's at a point where he has some other things going, we just need to find another medical director that is able to build on what he already has going in the county."

On June 5, 2012, Mr. Dunker made a written public records request to the Gage County Clerk seeking "a copy of any correspondence between the Gage County Board of Supervisors and former Gage County Medical Director, Dr. Don Rice, including any e-mails and written letters in the month of April and May...." A copy of the request letter is enclosed and labeled Exhibit "A." Later on June 5, 2012, Dunker received a phone call from the County Clerk in which she said that some e-mail records responsive to Dunker's request are not public information because they were sent or received by County Supervisors via private e-mail accounts used by the Supervisors. On June 7, 2012, Gage County Attorney Roger Harris formally responded to Dunker's record request. Mr. Harris' letter enclosed "copies of the invoices and correspondence (e-mails) between the Gage County Board of Supervisors and Dr. Don Rice in the months of April and May, 2012." However, Harris' letter also said, "[a]s the County Clerk informed you, none of the County Supervisors have County e-mails and therefore, any information contained on these personal accounts is not a public record under Nebraska law." A copy of Mr. Harris' June 7, 2012, letter is also enclosed, and is labeled Exhibit "B."

Gage County has a website. When one visits the site and clicks on the "Contacts" button, one is taken to a page which lists the name, address and telephone number for each of the seven County Supervisors. Enclosed as Exhibit "C" is a screen shot of the Gage County website "Contacts" page. Each Supervisor's name is highlighted in blue, and if a site visitor clicks on the name of a Supervisor, the Gage County website automatically generates an e-mail to be sent to that Supervisor at his or her personal e-mail account. Thus, if a website visitor clicks on Supervisor Rex Adams' name, the Gage County website generates an e-mail with an address of "shooteradams@yahoo.com." Supervisor Matt Bauman has apparently created a website providing information about his district; clicking on Bauman's name on the Gage County website "Contacts" page generates an e-mail to "mbaumand@gagecountyd2.com."

Particularly since Gage County's official website encourages the public to contact Gage County Supervisors via private e-mail accounts, the Daily Sun contends that Mr. Harris' response to the Daily Sun's record request is

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improper. Specifically, since Supervisors conduct County business via their personal e-mail accounts, the Daily Sun contends that Mr. Harris' statement that "information contained on these personal accounts is not a public record under Nebraska law," is not correct.

Neb. Rev. Stat. § 84-712.01(1) provides that "public records shall include all records and documents, regardless of physical form, of or belonging to... any county... or any... board... of any of the foregoing." Thus, the legal question presented here is not whether County Supervisors use private rather than County-provided e-mail addresses in dealing with the public, but rather, whether e-mails regarding official County business sent or received by County Supervisors are "of or belonging to" the County or the County Board of Supervisors. See, Nebraska Attorney General Opinion #97033, dated June 4, 1997.

To illustrate this point, I enclose copies of two of the documents provided by Mr. Harris in response to the Daily Sun's record request. On May 5, 2012, Dr. Rice sent an e-mail to Supervisors Adams and Bauman and to the Gage County Clerk. Dr. Rice's May 5, 2012, e-mail clearly conducts County business; it transmits an invoice for Dr. Rice's work, and provides information about a variety of County issues Dr. Rice had recently been working on. The e-mail indicates Dr. Rice's monthly invoice was sent as an attachment to the e-mail. A copy of this e-mail is marked as Exhibit "D." Indeed, Dr. Rice's resignation was submitted via e-mail to the same persons as his May 5, 2012, e-mail, at the same e-mail addresses. See Exhibit "E." These e-mails were presumably provided to the Daily Sun because they were also sent to the County Clerk, Dawn Hill.

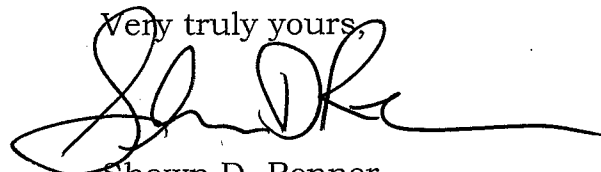
However, if that is why these e-mails were provided, it further demonstrates the fallacy of the County's position. Like the Supervisors, Gage County apparently does not provide the County Clerk an official County e-mail address. Rather, when a Gage County website visitor clicks on Ms. Hill's highlighted name on the contact page, the Gage County website generates an e-mail addressed to "clerk@gage.nacone.org." Likewise, when a Gage County website visitor clicks on Mr. Harris' name on the contact page, the website generates an e-mail addressed to "roger@nacone.org." Nacone.org is the website of the National Association of County Officials - Nebraska, not Gage County. The County apparently does not contend that the NACO e-mail accounts are "private" rather than "public."

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In light of Mr. Harris' June 7, 2012, letter, the Daily Sun does not know if anyone affiliated with Gage County has checked with any of the Supervisors to determine if they have e-mails responsive to Mr. Dunker's request. Gage County did not claim to withhold any documents based on the statutory list of records in Section 84-712.05 that may be withheld from public inspection. Since Gage County has chosen not to provide its employees and officials with official Gage County e-mail addresses, but instead has told the public through its website to conduct County business via e-mail addresses not owned or authorized by the County, it is not a sufficient response to say merely that private e-mail addresses cannot contain public records.

The Daily Sun therefore asks that the Attorney General determine that, to the extent the Gage County Supervisors sent or received e-mails from their "personal" accounts that reflect County business, such e-mails are public records which may not be withheld from the public merely because they were sent or received from "private" e-mail accounts. Per Section 84-712.03(2), the Daily Sun also requests that the Attorney General order Gage County to produce any e-mails sent or received via Supervisors' "personal" e-mail accounts that are responsive to Mr. Dunker's request.

Please feel free to contact me with any questions.

Very truly yours,

Shawn D. Renner
For the Firm

Encl.
cc: Chris Dunker
Roger Harris

Gage County Clerk
600 Court St.
Beatrice, NE, 68310

Dear Gage County Clerk's Office:

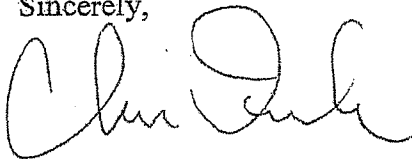
This is a request under the Freedom of Information Act. I request a copy of any correspondence between the Gage County Board of Supervisors and former Gage County Medical Director Dr. Don Rice including any emails and written letters in the month of April and May to be provided to me as soon as is reasonably possible.

In order to help to determine my status to assess fees, you should know that I am affiliated with the Beatrice Daily Sun and this request is being made for news gathering purposes and not commercial use.

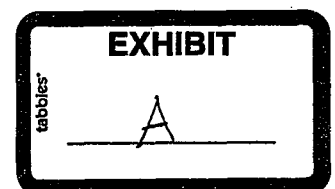
I am willing to pay up to 25 cents per copy of the requested information. If the fees will exceed this amount, please notify me first. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations of government.

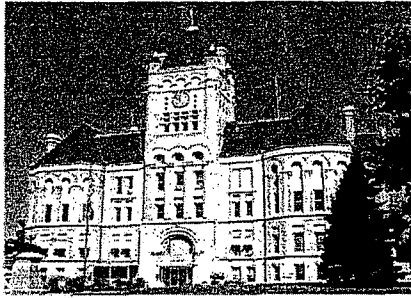
Thank you for consideration of my request.

Sincerely,



Chris Dunker
Beatrice Daily Sun
200 N. Seventh St.
Beatrice, NE, 68310
402-223-5233
chris.dunker@lee.net





OFFICE OF GAGE COUNTY ATTORNEY

612 GRANT, ROOM 21
BEATRICE, NE 68310

PHONE: 402-223-1344 FAX: 402-223-1380

Roger L Harris - County Attorney

Rick Schreiner - Chief Deputy

Amanda Spracklen-Hogan - Deputy

June 7, 2012

Chris Dunker
Beatrice Daily Sun
200 North 7th Street
Beatrice, NE 68310

Dear Mr. Dunker:

Your undated letter regarding a request under the Freedom of Information Act was received by the Gage County Clerk's Office on June 5, 2012, at 1:54 p.m. and was forwarded to our office for a response. You will find enclosed copies of the invoices and correspondence (e-mail) between the Gage County Board of Supervisors and Dr. Don Rice in the months of April and May, 2012.

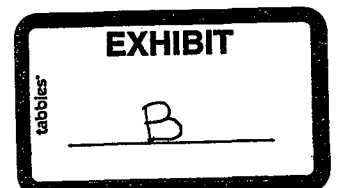
As the County Clerk informed you, none of the County Supervisors have County e-mails and therefore, any information contained on these personal accounts is not a public record under Nebraska law.

The cost for the research and copying of these records per your request is \$10.95. Please remit the amount to the Clerk's Office.

Sincerely,

Roger L. Harris
Gage County Attorney

RS/dfs
Enclosures





Contact Information

Courthouse Hours 8:00 a.m. - 5:00 p.m.

County Board Meets: Every other Wednesday

Board of Supervisors

Myron Dorn - District 1
12900 E State Hwy 41
Adams, NE 68301
(402) 988-3835

Matt Bauman - District 2
8375 W. Lilac Rd.
Beatrice NE 68310
(402) 228-6315
Web site: <http://www.gagecountyd2.com>

Kathy Setzer - District 3
905 Beaver Ave.
Beatrice, NE 68310
(402) 228-2677

Dennis M. Byars - District 4
823 N 8th St.
Beatrice, NE 68310
(402) 223-4439

Gary Lytle - District 5
1720 N 17th St.
Beatrice, NE 68310
(402) 223-2693

Rex Adams - District 6
116 N Douglas St PO Box 37
Blue Springs, NE 68318
(402) 645-3561

Terry Jurgens - District 7
47974 SW 75th Rd.
Odell, NE 68415
(402) 766-4737

Assessor

Patricia Milligan
612 Grant St. Rm 8
Beatrice, NE 68310
(402)223-1308
FAX: (402)228-2694

Attorney

Roger Harris
612 Grant St. Rm 21
Beatrice, NE 68310
(402)223-1344
Fax: (402)223-1380

Clerk

Election Commissioner

Dawn Hill
PO Box 429
Beatrice, NE 68310
(402)223-1300
FAX: (402)223-1371

Clerk District Court

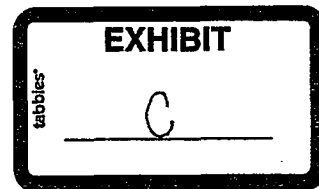
Diane G. Wells
612 Grant Street, Rm 11
Beatrice, NE 68310
(402)223-1332
FAX: (402)223-1313

County Court

Vicki Brothorst - Clerk Magistrate
612 Grant St. Room 17
Beatrice, NE 68310
(402) 223-1323
FAX: (402) 223-1374

Emergency Manager - Appointed

Mark Meints
PO Box 661
Beatrice, NE 68310
(402)223-1305



Gage County Extension Office

1115 W Scott St
Beatrice NE 68310
(402)223-1384
E-mail: phay1@unl.edu
Web site: <http://gage.unl.edu/>

Register of Deeds

Ruth E. Siems
PO Box 337
Beatrice, NE 68310
(402)223-1361

Surveyor

Chris Witulski
PO Box 713
Beatrice, NE 68310
(402)239-7608

Veterans Services Officer - Appointed

Philip W. Dittbrenner
619 N 7th St.
Beatrice, NE 68310
Phone:(402)223-1342
Fax:(402)228-2056

Highway Department / Planning & Zoning Admin

823 S 8th St
Beatrice NE 68310
(402)223-1395
FAX: (402)223-1351

Sheriff

Millard 'Gus' Gustafson
County Jail
612 Lincoln St.
Beatrice, NE 68310
(402)223-1382
FAX: (402)223-5223

Treasurer

Laurie Wollenburg
PO Box 519
Beatrice, NE 68310
(402)223-1316
FAX: (402)228-1978

Weed Superintendent

823 S. 8th St.
Beatrice, NE 68310
(402)223-1399

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Dawn Hill

From: Don Rice [drice@ucclincoln.com]
Sent: Wednesday, May 09, 2012 10:47 AM
To: Rex Adams; clerk@gage.nacone.org; mbauman@gagecountyd2.com
Subject: April 2012 Invoice
Attachments: Gage EMS April 2012.pdf

The April 2012 Invoice is Attached.

I am preparing a report for the quarterly review of charting and response times for Gage Co. I can say that it looks like all are in compliance except Pickrell.

Carl and I have been working with them; however we are having ongoing issues with them refusing to complete medical records all together.

It stems from a confusion about first responders. First responders are not required to complete a NARSIS report if they are working with a First Responder Group.

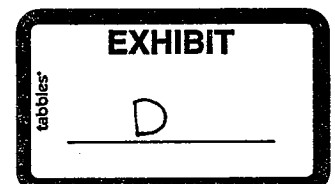
The problem is that Pickrell is licensed in Nebraska as an ambulance. This means that even though they are first responders, they must fill out NARSIS reports. The first responders have dumped this job on their one and single EMT.

We have been meeting with them and suggested they downgrade their license to first responder. They don't want to do that.

However, they are begin a bit difficult about also wanting to step up and act like an ambulance service.

I will keep you both posted but be advised I will probably recommend to the board their funding be cut.

Don Rice, M.D.



Dawn Hill

From: drice [drice@ucclincoln.com]
Sent: Friday, May 25, 2012 2:32 PM
To: Matt Bauman; Rex Adams; Dean Cole; Dawn Hill
Subject: Resignation

Placed on file by board
action on 5-30 2012
Dawn Hill
Gage County Clerk

> To: Matt Bauman
>
> From: Don Rice, M.D.
>
> RE: Resignation
>
> Dear Matt,
>
> Please be advised I am resigning as Medical Director for Gage County.
> Per the terms of our current contract I will continue my duties for 60
> days. This will be your transition time. I will appropriately notify
> the state that my services to Cortland, Clatonia, Pickrell, Odell,
> Beatrice Rural, Beatrice Rescue, and the National Homestead Monument
> will expire midnight July 25th.
>
> I appreciate the opportunity to work with so many people who wish to
> improve EMS care in Gage County. Notably I would like to thank the
> hard efforts of Brian Daake and Beatrice Rescue, Rex Adams, Mike and
> Connie Gates of Cortland Rescue, and the hardworking team of Odell
> Rescue. It has been a pleasure to serve them as their medical director.
>
> Sincerely,
>
> Don Rice, M.D.

