



STATE OF NEBRASKA
Office of the Attorney General

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July 23, 2021

Via email at [REDACTED]

RE: *File No. 21-M-104; St. Paul City Council, Eugene Killinger; Complainant*

Dear Mr. Killinger:

This letter is in response to your correspondence in which you requested that this office address alleged violations by the St. Paul City Council ("Council") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2020) ("Act"). In accordance with our normal procedures, we requested a response from the Council after we received your complaint and we subsequently received a response from the Council's attorney. We have now had an opportunity to review your allegations and the Council's response, and our conclusions are set out below.

ALLEGED VIOLATIONS

Upon review of your complaint, we have identified five alleged violations of the Open Meetings Act, as follows:

1. The December 21, 2020 meeting agenda was not sufficiently detailed;
2. A closed session held on December 21, 2020 was not conducted correctly;
3. Meeting minutes for November 2, 2020 and January 4, 2021 were not published correctly;
4. The Council voted on a resolution prior to the public meeting taking place on February 16, 2021; and
5. The Council did not have a copy of all reproducible written material available at the meeting on January 4, 2021.

The remainder of your allegations against the Council are not related to the Open Meetings Act. The Attorney General does not have general supervisory authority over local political subdivisions. Therefore, we will not address the remainder of your allegations.

ANALYSIS

Specificity of Agenda

Your complaint alleges that agenda item No. 21 on the December 21, 2020 meeting agenda is not sufficiently detailed. You provided a copy of the agenda from the December 21, 2020 meeting to support your claim. Agenda item No. 21 states, **“Closed Session: For the prevention of needless injury to the reputation of an individual.** The City of St. Paul reserves the right to go into Closed Session when it is clearly necessary to protect the public interest or for the prevention of needless injury to the reputation of an individual; or pending litigation.” In its response, the Council states that agenda item No. 21 is an item that appears on all agendas when it is anticipated there may be an issue requiring a closed session. Neb. Rev. Stat. § 84-1411(1)(e) provides that “[a]genda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting.” It appears the Council knew there would likely be a closed session to discuss city employee, Ed Thompson. Assuming the Council was aware of this, it should have been more descriptive in agenda item No. 21. In the future, the Council should be more descriptive in its closed session agenda item when it is aware that a closed session will take place.

Closed Session

Your complaint next alleges issues with the closed session at the December 21, 2020 meeting. Specifically, you allege there was no motion to go into closed session, that it was unclear how council member Thompson voted, and that “vacation time” is not an appropriate item for a closed session. You provided a copy of the agenda and meeting minutes from the December 21, 2020 meeting to support your allegations. In its response, the Council states the reason for the closed session was to discuss the performance, attendance, and vacation time of city employee, Ed Thompson. Further, Mr. Thompson had a daughter pass away recently and did not want issues surrounding his family and their medical information discussed in open session. The Council also states the Mayor made a motion to go into closed session at the meeting.

Closed sessions are permitted when it is clearly necessary to protect the public interest or for “the prevention of needless injury to the reputation of an individual.” Neb. Rev. Stat. § 84-1410(1). One of the reasons to close a meeting includes for the “[e]valuation of the job performance of a person when necessary to prevent needless injury to the reputation of a person and if such person has not requested a public meeting.” *Id.* A review of the December 21, 2020 minutes shows the Mayor made the

motion to go into closed session and it was seconded by council member Kowalski. The minutes also show that at the conclusion of the closed session, council member Kowalski moved to approve Mr. Thompson extending his unused vacation to the end of March 2021, due to extenuating circumstances. Additionally, the motion contained both the subject matter, i.e., city employee Ed Thompson, and the statutory reason to close, i.e., to prevent needless injury to the reputation of an individual. The minutes reflect council member Kowalski and Schmid voted "aye," and council member Thompson abstained from voting due to a family relationship with Mr. Thompson. Lastly, you allege that "vacation time" is not a proper subject for a closed session. However, the Council states the purpose of the closed session was to discuss Mr. Thompson's performance, attendance, and vacation time. Further, the discussion about Mr. Thompson involved family and medical information. Accordingly, it was proper for the Council to hold a closed session to discuss Mr. Thompson's job performance, attendance, and vacation time. The Council did not violate the Open Meetings Act in regard to this portion of your complaint.

Meeting Minutes

Your next allegation is that the Council did not make the minutes from the November 2, 2020 and January 4, 2021 meetings available for inspection within the timeframes set out by the Act. However, there is no evidence this occurred, and the Council has denied it. Neb. Rev. Stat. § 84-1413(5) provides that "[m]inutes shall be written . . . and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier" In its response, the Council states that minutes are always available for inspection at the City Clerk's office within ten days of a meeting and are generally available the day following a meeting. Accordingly, the Council did not violate the Act in regard to this portion of your complaint.

Voting on Resolution 2021-1

Your next complaint is the Council voted on Resolution 2021-1 before the public meeting on February 16, 2021. You provided a copy of the February 16, 2021, agenda as well as documents relating to Resolution 2021-1 to support your claim. In its response, the Council states the City Clerk made documents relating to Resolution 2021-1 available to the public prior to the meeting on February 16, 2021. Further, these documents simply show Resolution 2021-1 passing at a future date and are not indicative of the Council already having approved it. None of the Resolution 2021-1 documents which you included with your complaint are signed or dated. Additionally, the meeting minutes from February 16, 2021, show the Council voted to give notice to the public that a hearing would be held on April 5, 2021, regarding Resolution 2021-1. Accordingly, the Council did not vote on Resolution 2021 prior the public meeting and did not violate the Open Meetings Act in regard to this portion of your complaint.

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Copies of Meeting Materials

Your final complaint is that the Council did not have a copy of all reproducible written material available at the meeting on January 4, 2021. However, there is no evidence this occurred, and the Council denies it. The statute in effect on January 4, 2021, Neb. Rev. Stat. § 84-1412(8) (2014), provides that “[p]ublic bodies shall make available at the meeting or the instate location a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting.”¹ In its response, the Council states the City Clerk makes copies of all meeting materials available at a front table during meetings. Further, the Council states all materials at meetings are broadcast on a large screen television that is visible to all persons attending. As such, the Council did not violate the Act regarding the availability of meeting materials.

CONCLUSION

For the reasons stated above, we do not believe that the Council has violated the Open Meetings Act with respect to the issues raised in your complaint. 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,

DOUGLAS J. PETERSON
Attorney General


Laura A. Nigro
Assistant Attorney General

cc: Jason White

35-217-29

¹ Section 84-1412 was amended during the 2021 legislative session to include meetings held by virtual conferencing. 2021 Neb. Laws LB 83, § 13.