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April 12, 2018

Senior Citizens Industries
Karl Hughes, Chairman
304 E. 3rd St.
Grand Island, NE 68801

Re: *File No. 18-M-103; Midland Area Agency on Aging; Complainant Karl Hughes*

Dear Mr. Hughes:

This letter is in response to your correspondence received by us in which you requested that this office investigate alleged violations by Midland Area Agency on Aging ("MAAA") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2014, Cum. Supp. 2016, Supp. 2017). In accordance with our normal procedures, we requested a response from MAAA after we received your complaint, and we subsequently received a response from its attorney, David J.A. Bargaen. We have now had an opportunity to review your allegations and MAAA's response in detail, and our conclusions are set out below.

FACTS

Our understanding of the facts in this matter is based upon your correspondence, along with the response from MAAA. Your complaint concerns the January 4, 2018 meeting of the MAAA Board and the notice provided for that meeting. You allege that MAAA failed to provide adequate notice of the January 4 meeting because it did not provide an agenda at least 24 hours in advance to an interested party¹. Your complaint included an email from a member of the staff at MAAA to that interested party dated January 3, 2018 at 11:45 a.m. attaching the agenda for the January 4, 2018 meeting, which was to begin at 9:30 a.m. MAAA denies your allegation that this meeting was improperly noticed, and enclosed in its response to us an affidavit of publication showing the meeting notice was published in the Hastings Tribune on January 3, 2018.

¹ It does not appear this email was sent directly to you by MAAA, and we are unaware of the identity of the email recipient.

ANALYSIS

The Open Meetings Act provides:

Each public body shall give reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. Such notice shall be transmitted to all members of the public body and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting or (b) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

Neb. Rev. Stat. § 84-1411(1) (2017). You allege that the email sent on January 3, 2018 at 11:45 a.m. attaching the agenda for the following morning's meeting is conclusive proof that the meeting was not properly noticed to the public under the Open Meetings Act. The Board responded by providing an affidavit of publication showing that notice was published in a local newspaper on January 3, 2018 and stating that notice was provided 24 hours before the meeting. We believe clarity is needed as to the provisions of the Open Meetings Act concerning notice of the meeting versus availability of the agenda. These are two separate requirements of the Open Meetings Act.

As to notice of meetings, the Open Meetings Act requires "reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes." *Id.* There is no time frame in this provision related to the amount of time before a meeting is to be held for which notice is appropriate. MAAA did not indicate to us what method has been designated in its minutes for notice of its meetings. However, it provided us evidence that notice was published on January 3, 2018 in the Hastings Tribune, a local newspaper with a daily circulation.

On the issue of whether proper notice was provided, while not clearly a violation, it is difficult to consider publication in a daily newspaper the day before the meeting to be "*reasonable* advanced publicized notice" of a regular meeting of a public body. Publishing notice does not require that an agenda may no longer be amended; certainly even after notice is published, a public body may alter its agenda up to 24 hours before the meeting, provided the agenda is kept current at the location indicated in the notice and is available to members of the public upon request. § 84-1411(1). We believe

MAAA should publish notice in the local newspaper, if that is its designated method of notice, more in advance of its meetings than the day before, particularly given that the Hastings Tribune is a daily publication. However, your complaint that the current agenda was not emailed to an interested party more than 24 hours before the meeting is not a violation of the Open Meetings Act and is not proof that proper notice was not given of the meeting in question.

A separate provision of the Open Meetings Act is that the agenda for the meeting is not to be altered less than 24 hours before the meeting, except as to items of an emergency nature. *Id.* Your complaint is unclear as to whether you believe the agenda was altered less than 24 hours before the meeting. However, MAAA has assured this office that while the agenda was revised based upon request of an MAAA Board member on January 2, 2018, the agenda was not altered within 24 hours of the meeting. We have no evidence to the contrary.


In response to your complaint, at its February 1, 2018 meeting, the MAAA Board took steps to cure any violations that may have occurred at its January meeting, as allowed in *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979). The Board of MAAA reheard any items which were added to the agenda on January 2, 2018. However, we would note that anything less than taking up all agenda items from the January meeting again at the February meeting would not have cured any violations relating to a lack of sufficient notice of the meetings. However, as stated, we do not believe the notice was clearly in violation of the Open Meetings Act. We recommend that MAAA will provide more notice of its future regular meetings.

CONCLUSION

For the reasons stated above, we do not believe that MAAA has clearly violated the Open Meetings Act and no further action is necessary by this office. 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



Natalee J. Hart
Assistant Attorney General

cc: David J.A. Bargaen