



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
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May 21, 2020

Debra Beck
[REDACTED]

RE: *File No. 20-M-107; Douglas County SID 438, Debra Beck; Complainant*

Dear Ms. Beck:

This letter is in response to your correspondence in which you requested that this office investigate alleged violations by the Sanitary and Improvement District No. 438 of Douglas County ("SID") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2018, Supp. 2019) ("Act"). In accordance with our normal procedures, we requested a response from the SID after we received your complaint and we subsequently received a response from the SID's attorney, John Prosocki, who responded on behalf of the SID. We have now had an opportunity to review your allegations and the SID'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 SID is not giving proper notice of its meetings to the public;
2. The meeting agendas are not sufficiently detailed;
3. The meeting room is too small to accommodate the public and meeting times are inconvenient for the public;
4. Decisions are being made in secret and abuses of closed sessions; and
5. The location of meeting minutes are inconvenient for the public to access.

The remainder of your allegations against the SID are not related to the Open Meetings Act. The Attorney General does not have general supervisory authority over

local political subdivisions such as a sanitary and improvement district. Therefore, we will not address the remainder of your allegations. In its response to your complaint, the SID generally denies any violations of the Open Meetings Act have occurred and has provided copies of a meeting agenda and meeting notice to support its position.

ANALYSIS

Notice of Meetings

Your complaint alleges that sufficient notice of meetings is not being given to the public. Specifically, you complain that residents are not emailed meeting notices prior to every meeting, and that the SID Board of Directors is emailed this notice. Neb. Rev. Stat. § 84-1411(1) provides that “[e]ach 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.” In its response, the SID states that it publishes notices of its meetings in *The Daily Record*, and has done so since the SID’s formation in 1999. The SID also provided a copy of a notice from its January 23, 2020 meeting published in *The Daily Record* as evidence.

The Act does not require a public body to provide individual notice to each member of the public. However, the Act does require that the meeting notice be transmitted to the public body and to the public. See Neb Rev. Stat. § 84-1411(1). According to the proof of publication provided by counsel, *The Daily Record* has a paid circulation in Douglas County “in excess of 300 copies.” Due to its niche audience, there is a question whether publishing the meeting notice in *The Daily Record* constitutes “reasonable” notice. We suggest that the SID consider publishing its meeting notices in the *Omaha World Herald* instead to reach a greater number of people, including those residing in the SID.

Meeting Agenda

Your next allegation is that the SID’s meeting agendas lack sufficient detail. You provided a copy of an agenda from the September 9, 2019 meeting as evidence of your claim. The September 9, 2019, agenda contains the following items: “Financial Report,” “Miscellaneous” [under the “Engineer Report”], and “Payment of Bills.” The SID also provided a meeting agenda from its January 23, 2020 meeting. This agenda contains the following items: “Financial Report,” “Easements—Avenue One,” “Insurance,” “Miscellaneous” [under “Engineer Report”], “Payment of Bills,” and “Miscellaneous Matters.” Neb. Rev. Stat. § 84-1411(1) provides that “[a]genda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting.” A review of the September 9, 2019 and January 23, 2020 meetings show that the agendas were not sufficiently descriptive. As a general rule, a

one-word item such as “Insurance,” will likely be insufficient. As such, we suggest that the SID consider being more descriptive in its meeting agenda items.

Meeting Location and Time

Your complaint next alleges that the SID’s meetings are held in a room that is too small to accommodate the public. You state that the meeting location was recently changed from a room at the Dvorak Law Offices to a location closer to the SID’s residents. Further, you contend that the meeting room at the new location is too small to accommodate the public. Neb. Rev. Stat. § 84-1412(4) provides that “[n]o public body shall, for purposes of circumventing the Open Meetings Act, hold a meeting in a place known by the body to be too small to accommodate the anticipated audience.”

In its response, the SID denies that the meeting room is too small to accommodate the public. The SID states that from 2006 until late 2019, it held its meetings at the Dvorak Law Offices, and a typical meeting would have a total of approximately ten people attend. The SID states that since June 2019, attendance at meetings has increased slightly but has never surpassed a total of twenty people. The SID further advises the meetings were held in a large conference room that could easily accommodate twenty people. The SID states that the location of the meetings was recently changed at your request as you complained about the distance from your home to the Dvorak Law Offices. To accommodate you, the SID moved its meeting location to the office of its municipal financial advisor. The SID claims that although the meeting room is smaller, it still has been able to comfortably accommodate the attendance at the meetings. Further, the SID states that the SID trustees would likely prefer to return to the previous meeting location at the Dvorak Law Offices, and that the location change was only made to accommodate you.

There is no evidence that the meeting room at the Dvorak Law Group or the office of the financial advisor is too small to accommodate the public. Further, the SID did not change its meeting location in an effort to circumvent the Open Meetings Act. Rather, it changed its location to accommodate you. Accordingly, the SID did not violate the Open Meetings Act in regard to this portion of your complaint.

Next, you complain about the time that SID meetings are held. You claim that meetings are currently held at 1:00 pm or 2:00 pm and you would like them to be held at 4:00 pm so that more residents are able to attend. There is nothing in the Act which requires a public body to hold its meeting at a particular time. Therefore, the SID has not violated the Open Meetings Act regarding this portion of your complaint.

Closed Sessions

Your next allegation is that the SID is making very expensive decisions in secret. You claim these decisions are in “secret” because residents are not notified of the

meetings and are not able to attend due to the meeting time. Sufficiency of meeting notices and the time of meetings has already been discussed. Further, you claim that the SID is using closed sessions inappropriately. You claim the SID goes into a closed session at every meeting. You offer no further evidence in support of your claim.

Neb. Rev. Stat. § 84-1410(1) states that “[a]ny public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual. . . .” Section 84-1410 further allows a public body to close its meeting for “[s]trategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body.” In its response, the SID stated that it is currently a party to two lawsuits pending in Douglas County District Court (Case No. CI 18-73 and Case No. CI 18-5708). As such, the SID has had reason to go into closed sessions, as authorized under § 84-1410, for discussions relating to pending litigation. Therefore, we are unable to conclude that the SID violated the Open Meetings Act regarding this portion of your complaint.

Meeting Minutes

Your final complaint is that you would like the meeting minutes available at the Dvorak Law Offices instead of at the Douglas County Clerk’s Office. Neb. Rev. Stat. § 84-1413(4) provides that “[t]he minutes of all public meetings and evidence and documentation received or disclosed in open session shall be public records and open to public inspection during normal business hours.” As is the case with meeting agendas, the minutes should also “be available for public inspection at the principal office of the Board at 9500 West Dodge Road, Suite 100, Omaha, Nebraska 68114.” See January 23, 2020 Meeting Notice, provided by the SID’s counsel. While Neb. Rev. Stat. § 31-727.02 (2016) requires an SID board clerk or administrator to transmit minutes within 30 days of a meeting to the “municipality or county within whose zoning jurisdiction the [SID] is located,” the Douglas County Clerk is not the custodian of those records. To the extent the Dvorak Law Firm was not providing for inspection the meeting minutes upon request, and instead referring you to the Douglas County Clerk, that is contrary to the Open Meetings Act. To comply with the Act, we advise the SID to have meeting minutes available for inspection at the principal office of its Board.

CONCLUSION

For the reasons stated above, we do not believe the SID has violated the Open Meetings Act as to the allegations regarding meeting location/time and closed sessions. However, we believe there is a question as to whether publishing the meeting notices in *The Daily Record* is “reasonable” and suggest the SID publish notice in a medium which will reach a larger audience. There is also a serious question as to whether the meeting agendas are “sufficiently descriptive” and admonish the SID to provide a more detailed

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description of agenda items. Lastly, the SID must make meeting minutes available for inspection at the principal office of its Board.

We are providing a copy of this disposition letter to counsel for the SID. At this time, we plan no further action and are closing our file. If you disagree with the analysis set forth above, you may wish to consult with your private attorney to see what other legal remedies may be available to you.

Sincerely,

DOUGLAS J. PETERSON
Attorney General

/s/Laura A. Nigro
Laura A. Nigro
Assistant Attorney General

cc: John M. Prosocki