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Office of the Attorney General

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DOUGLAS J. PETERSON
ATTORNEY GENERAL

JASON M. BERGEVIN
ASSISTANT ATTORNEY GENERAL

June 12, 2020

Rose A. Wilson
[REDACTED]

RE: *File No. 20-M-108; Loup City Public Schools; Rose A. Wilson et al.,
Complainant*

Dear Ms. Wilson:

This disposition letter is in response to your correspondence received by our office on February 25, 2020. You have alleged that the Loup City Public Schools ("District") Board of Education ("Board") committed multiple violations of the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2018, Supp. 2019) ("Act"). On April 15, 2020, our office received correspondence from the Board, which contained a legal analysis from Board legal counsel on the issues raised in your complaint. We have now completed our review of your complaint and the analysis provided to us by the Board. Our conclusion and future action in this matter is set forth below.

At the outset, it is important to note that (1) the enforcement authority of this office relates only to the Act—not Board policies or other statutory provisions that may be implicated; (2) any meeting over a year old falls outside the statute of limitations in the Act; (3) there are no provisions for removing members of the public body in the Act; (4) the Freedom of Information Act (FOIA) is a federal law and is not applicable to state or local government; and (5) this letter will cite to actual provisions of the Act and not the online outline this office maintains at <https://ago.nebraska.gov/open-meetings>.

RELEVANT FACTS

The individuals who signed the complaint are taxpayers of District 1 in Sherman County, Nebraska. This area is served by the Loup City Public Schools. Your complaint alleges thirteen (13) separate violations of the Act which are summarized as follows:

1. The Board failed to adequately designate and record its method of reasonable advanced public notice.
2. The Board violated the Act by designating three public places within Loup City as the public places to post notice of meetings.
3. The Board violated the Act by failing to publish notice of various meetings in the *Sherman County Times*.
4. The Board violated the Act by failing to state in meeting minutes that two people verified proper notice of the meeting.
5. The Board violated the Act by failing to publish approved meeting minutes in the *Sherman County Times*.
6. The Board violated the Act by maintaining and making available multiple versions of minutes for meetings that describe the proceedings to varying degrees.
7. The Board violated the Act by failing to record the roll call of votes to approve the minutes of a previous meeting.
8. The Board violated the Act by failing to consistently refer to the type of meeting held and failing to approve the minutes of previously held meetings during “special” or “work session meetings.”
9. The Board violated the Act by engaging in a question and answer session with attendant members of the public at the conclusion of a “work session” meeting.
10. The Board violated the Act when Board Member Friesen participated in and voted on various board actions related to a construction project.
11. The Board violated the Act when Board Member Kowalski participated in and voted on various board actions related to a construction project.
12. The Board violated the Act when Board Member Ericson participated in and voted on board action related to vehicle purchases and by voting to correct minutes that had been previously approved.
13. The Board violated the Act by describing the substance of all matters discussed in meeting minutes to varying degrees.

DISCUSSION

The numbered paragraphs in this section correspond to the alleged violations outlined above.

1. Neb. Rev. Stat. § 84-1411(1) requires that each public body give reasonable advanced publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes. In *Schauer v. Grooms*, 280 Neb. 426, 786 N.W.2d 909 (2010), the Nebraska Supreme Court indicated that a public body need not formally set forth the choice of method for giving notice of meetings in the minutes of the public body. It is sufficient to incorporate the method by reference at the time the method is designated. According to the meeting minutes from October 9, 2017, the Board approved policy 204.07 which provides, in pertinent part:

The usual method of giving advance notice of meetings of the Board of Education of the Loup City Public School District shall be by posting, and such posting shall occur by posting notice in at least three (3) public places throughout the school district not less than two (2) days prior to such meeting, unless such meeting is an emergency meeting, in which event notice will be given as required by law. Such notice shall be placed in the lobby of the Loup City Post Office, the bulletin board in the lobby of the Heritage Bank, in the lobby of Citizens Bank, on the front window(s) of the Loup City Public School, and on the school's website. The board may also, but is not required to, publish notice of its meetings in a local newspaper.

The Board recorded the designated method in its minutes by including the approval of policy 204.07 in the October 9, 2017 meeting minutes. It is now sufficient for the Board to record in meeting minutes that notice was provided in accordance with the approved method for giving notice of the meeting. This explains why the specific locations of the three postings do not appear in meeting minutes.

2. Policy 204.07 directs the Board to post notice of meetings in at least three (3) public places throughout the school district and goes on to identify specific locations in Loup City for posting. Although posting notice in other areas of Sherman County District 1 could potentially reach more taxpayers, the Act does not address where notice should be posted. This office recommends working with the Board to revise policy 204.07 so that at least one of the posting locations is in a part of the district outside Loup City.

3. The Act does not require that notice be provided in a local newspaper. Policy 204.07 states, "[t]he board may also, but is not required to, publish notice of its meetings in a local newspaper." This language makes the local newspaper an optional means for publishing notice. Notice of certain meetings was not published in the *Sherman County Times*, but that does not constitute a violation of the Act or the Board's policy.

4. The Act does not require that meeting minutes include a verification from multiple individuals that notice of the meeting was properly posted and published. Therefore, the Board did not violate the Act by failing to state in meeting minutes that two people verified notice of the meeting.

5. The Act does not require board meeting minutes to be published in a local newspaper. Policy 204.11 directs that meeting minutes shall be forwarded to the newspaper designated as the official newspaper for publication. Meeting minutes were not published in the *Sherman County Times* on multiple occasions. This is a violation of policy 204.11 and Neb. Rev. Stat. § 79-580 (2018) which requires publication of a concise summary of meeting proceedings; however, this was not a violation of the Act. This office does not enforce policy or statutes outside of the Act, so the District complaint process is the appropriate forum to address this issue.

6. Neb. Rev. Stat. § 84-1413(1) requires the Board to keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed. This requirement is also codified in Board policy 204.11. Meeting minutes that contain the necessary information are available to the public by visiting the Superintendent's office during business hours. Neb. Rev. Stat. § 84-1413(6) authorizes the board of a school district or educational service unit to keep the minutes of its meetings as an electronic record. The Board has utilized that provision and archived meeting minutes on its website; however, the website contains multiple versions of minutes for the same meeting. The Board's practice of maintaining multiple versions of meeting minutes is problematic, but does not constitute a clear violation of the Act or policy 204.11. In its response to your complaint, the Board acknowledged that this practice promoted confusion. The Board represented that it has taken steps to end this practice and ensure that the only minutes made available to the public are consistently and sufficiently descriptive regarding the substance of matters discussed and the actions taken.

Policy 204.11 directs the Board Secretary to keep complete minutes of special and regular board meetings. Your complaint contends that the Board Secretary does not keep or publicize the meeting minutes. The District complaint process is the appropriate forum to address that issue.

7. The Act does not require that meeting minutes be approved at a meeting, but if a vote is taken to do so, that vote must be by roll call and recorded in the meeting minutes. Neb. Rev. Stat. § 84-1413(2). A review of meeting minutes reveals that meeting minutes have been approved at some meetings without a roll call vote being recorded. For example, the minutes of the February 10, 2020 meeting were read and approved at the March 9, 2020 meeting, but there is no record of the roll call vote. This practice is contrary to the Act and must be discontinued.

8. The Act does not require the Board to use a specific term when describing a meeting in the minutes. Regular sessions, work sessions and special sessions all constitute a "meeting" under Neb. Rev. Stat. § 84-1409(2) and create the same obligations for the Board. Those obligations do not include voting to approve the minutes of a meeting at the next meeting. Board policy 204.11 directs that approval of meeting

minutes shall be part of the agenda for the next regular meeting. The District complaint process is the appropriate forum to address this issue.

9. Board policy 204.02 explains that no action or public comment will be taken at work sessions. The Board may have violated this policy when it engaged in a Q&A with attendant members of the public at the work session on September 30, 2019, but that does not equate to a violation of the Act. The Act does not expressly prohibit this type of activity. The District complaint process is the appropriate forum to address this issue.

10. The Act does not address conflicts of interest within a public body. The Nebraska Accountability and Disclosure Commission is the appropriate agency to review your allegation that Board Member Friesen participated in and voted on various board actions related to a construction project.

11. The Act does not address conflicts of interest within a public body. The Nebraska Accountability and Disclosure Commission is the appropriate agency to review your allegation that Board Member Kowalski participated in and voted on various board actions related to a construction project.

12. The Act does not address conflicts of interest within a public body. The Nebraska Accountability and Disclosure Commission is the appropriate agency to review your allegation that Board Member Ericson participated in and voted on board action related to vehicle purchases and by voting to correct minutes that had been previously approved.

13. Similar to Paragraph 6, the Board's practice of describing the substance of matters discussed to differing degrees in meeting minutes is problematic, but does not constitute a clear violation of the Act. In its response to your complaint, the Board acknowledged that this practice promoted confusion. The Board represented that it has taken steps to end this practice and ensure that the only minutes made available to the public are consistently and sufficiently descriptive regarding the substance of matters discussed and the actions taken.

In light of our findings identified in Paragraph 7, we strongly suggest to the Board, through a copy of this letter to its legal counsel, Karen A. Haase, that all technical requirements of the Act regarding voting are to be strictly enforced. Failure of the Board to heed our suggestion could lead to Board actions being challenged in the future.

Rose A. Wilson
June 12, 2020
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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, may be available to you under the Act or any other provision of law.

Sincerely,

DOUGLAS J. PETERSON
Attorney General

A handwritten signature in cursive script that reads "Jason M. Bergevin".

Jason M. Bergevin
Assistant Attorney General

cc: Karen A. Haase

50-005-29