



STATE OF NEBRASKA  
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**DOUGLAS J. PETERSON**  
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August 23, 2022

Via email at [REDACTED]  
Vanessa Fanning

Via email at [REDACTED]  
James Majors

RE: *File No. 22-M-118; Wauneta-Palisade Board of Education; Vanessa Fanning and James Majors, Complainants*

Dear Ms. Fanning and Mr. Majors:

This letter is in response to your complaint alleging violations of the Nebraska Open Meetings Act ("Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Supp. 2021), amended 2022 Neb. Laws LBs 742, 908, and 922, by the Wauneta-Palisade Board of Education ("Board"). In accordance with our normal procedure with respect to such complaints, we sent a copy of your complaint to Board President Allison Sandman and requested a response. On May 11, 2022, we received a response to your complaint from attorney Joshua J. Schauer, Perry Law Firm, who represents the Board. We have completed our review of the complaint, and our findings and conclusions are set out below.

### **BACKGROUND & ALLEGED VIOLATIONS**

Our understanding of the facts in this case is based on your complaint and the information contained in the Board's response.

The Board consists of six persons, i.e., Board president Allison Sandman, John Jutten, Laurie Maris, Hondo Fanning, Aaron McKinney, and Marty Wheeler. On March 15, 2022, the Board held its regularly scheduled meeting at 6:00 p.m. in Wauneta. Your complaint notes that all Board members were present with eleven community members in attendance. The meeting agenda included item IV. "Recognition of Visitors/Public Comment" and item V.I. "Possible Building Updates." According to the minutes, two

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members of the public asked the Board during public comment to stream its meetings.<sup>1</sup> Following public comment, the Board conducted an extensive discussion on agenda item V.1., and took no action with respect to this item. At the conclusion of the meeting, Mr. Majors asked for an additional five minutes of public comment to address “information that was presented” during the meeting. The request was denied and the meeting adjourned at 8:02 p.m.

According to your complaint, after the meeting adjourned, patrons left the building and you “waited outside to speak with a board member” who said he would meet Mr. Majors after the meeting. You indicate that you observed the superintendent leave the parking lot in his car at 8:37 p.m., but did not see him exit the building and you were unable to get his attention before he drove away. Next, Mr. Majors attempted to reenter the building, but the doors were locked. You indicate that the lights remained on in the Board room, while all Board member vehicles remained in the parking lot. You further indicate that Mr. Majors left the area at approximately 8:44 p.m. Subsequently, Ms. Fanning drove around the block and met one Board member walking home, “and observed three to four people walking to their vehicles.” You state that “[c]onsidering the nature of the meeting, lack of transparency, and the urgency for informational meetings, to the public it appears very suspicious for the board members to remain in a locked building an additional 45 minutes.”

Mr. Schauer denies that any private meetings took place behind locked doors and states that “there is no basis for these allegations.” He informs us that following the meeting, Board members Jutten and Maris were the first to leave. Three Board members on the building and grounds subcommittee (Fanning, McKinney, and Wheeler) toured the building with an architect who had attended the meeting and presented information on agenda item V.I. Board president “Sandman remained in the building and had discussions with a few non-Board members, including Principal Joseph Frecks.”

With respect to the locked building, Mr. Schauer indicates that administrative assistant Marj Rundback, pursuant to her standard practice, locked the building doors at some point after the Board meeting, but is uncertain as to when. The Board does not dispute that the doors were locked when Mr. Majors attempted to reenter the building at 8:44 p.m. However, Mr. Schauer notes that the doors may have been locked shortly before Mr. Majors attempted to reenter.

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<sup>1</sup> You indicate in your complaint that for months patrons of the school district have asked the Board to stream the meetings “for those who could not attend in person.” However, the Board has not done so.

## DISCUSSION

Through the Act, “the Legislature has declared that ‘the formation of public policy is public business and may not be conducted in secret.’” *Schauer v. Grooms*, 280 Neb. 426, 442, 786 N.W.2d 909, 923 (2010). The Act’s intent is “to ensure that the formation of public policy is public business, not conducted in secret, and to allow citizens to exercise their democratic privilege of attending and speaking at meetings of public bodies.” *Id.* As such, “open meetings laws should be broadly interpreted and liberally construed to obtain their objective of openness in favor of the public.” *Id.* at 441, 786 N.W.2d at 922. “In all meetings of a school board of a Class III school district, a majority of the members shall constitute a quorum for the transaction of business. . . . All meetings of the board shall be subject to the Open Meetings Act.” Neb. Rev. Stat. § 79-554 (Cum. Supp. 2020). Here, Wauneta-Palisade is a Class III school district and its board of education consists of six members. Therefore, four members of the Board constitutes a quorum, and any meeting of four or more Board members requires compliance with the Act.

You assert that it is “very suspicious” that Board members remained in a locked building for an additional forty-five minutes after the conclusion of the public meeting. In response, the Board asserts that there is no evidence of any intent to hide from the public. Based on the information we received from Mr. Schauer, we agree. While a quorum remained in the building after the adjournment of the public meeting, there is no evidence that the Board members engaged in any of the activities set out in the definition of “meeting” in Neb. Rev. Stat. § 84-1409(2), i.e., “briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.” Moreover, information provided by the Board indicates that the Board held informational meetings on the district’s buildings on March 28, 2022, and April 4, 2022, prior to its April 11, 2022, meeting, which included a “Question and Answer Period” for patrons. To the extent your complaint alleges the Board made decisions or effected policy in private on March 15, 2022, your complaint fails to identify any specific decision or policy resulting from the post-meeting interactions on March 15, 2022. Without more, we find no violation of the Act.

Regarding the subcommittee remaining in the building with Mr. Sertich to tour the facility, subcommittees of the public bodies are not public bodies under the Act, “unless a quorum of the public body attends a subcommittee meeting or unless such subcommittees are holding hearings, making policy, or taking formal action on behalf of the parent body.” Neb. Rev. Stat. § 84-1409(1)(b). “[B]y excluding nonquorum subgroups from the definition of a public body, the Legislature . . . balanced the public’s need to be heard on matters of public policy with a practical accommodation for a public body’s need for information to conduct business.” *Schauer*, 280 Neb. at 445, 786 N.W.2d at 925 (citing *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 881, 725 N.W.2d 792, 806 (2007)). Because less than a quorum toured the facility, and no evidence has been presented

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showing that the subcommittee held a hearing, made policy, or took formal action on the behalf of the Board, there is no violation of the Act.

Finally, to the extent you allege a violation based on the denial of requests for streaming the Board's meetings, we find no violation. There is nothing in the Act requiring a public body to stream its public meetings. We also find no violation relating to the denial of Mr. Majors' request for additional public comment at the conclusion of the meeting. In this respect, Neb. Rev. Stat. § 84-1412(2) provides, in part: "A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings." Accordingly, a public body must set aside some time at some of its meetings for members of the public to address it. There is no absolute right for members of the public to address a public body at any given meeting or on any given agenda item, so long as there is some time at some meetings set aside for public comment. Public bodies can rightfully refuse to allow public comment at a given meeting, or as they consider a particular agenda item. Accordingly, the Board did not violate the Act by denying a request for an additional public comment period, particularly since public comment was held earlier in the meeting.

#### **CONCLUSION**

Based on the foregoing, we find no violation of the Act relating to the matters raised in your complaint. Since no further action will be taken by this office with respect to this matter, we are closing our file. If you disagree with our analysis, you may wish to consult with your private attorneys to determine what additional remedies, if any, may be available to you under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Leslie Donley  
Assistant Attorney General

c: Joshua J. Schauer (via email only)

49-3016-30