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Office of the Attorney General

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August 3, 2023

Via email at [REDACTED]
Sandy Vosler

Via email at [REDACTED]
Dan Minarick

RE: *File No. 23-M-101; Board of Trustees of the Village of Morse Bluff; Sandy Vosler, Dan Minarick, Complainants*

Dear Mr. Vosler and Mr. Minarick:

In January 2023, you both registered complaints with this office alleging violations of the Nebraska Open Meetings Act ("Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2022), by the Board of Trustees of the Village of Morse Bluff ("Board"). In accordance with our normal procedure with respect to such complaints, we sent a copy of the complaint materials to the Board for a response. On March 8, 2023, we received a response from attorney Maureen Freeman-Caddy on behalf of the Board. We have now completed our review of the complaints, and our findings and conclusions are set out below.

Before we begin, please note that § 84-1414(2) gives this office express enforcement authority over the Act. However, we have no general supervisory authority over governmental subdivisions in Nebraska, including cities, counties, and villages. For example, while we can determine whether an agenda set by a public body is sufficiently descriptive under the Act, we do not have authority to review the process by which the governing bodies of governmental subdivisions set their agendas. The question there involves a governance issue rather than matters pertaining to the Act. Governance issues involving governmental subdivisions generally do not implicate this office. Consequently, any matters raised in your complaints that do not involve provisions of the Act will not be addressed.

ALLEGED VIOLATIONS

After reviewing the complaints, we have identified six alleged violations of the Act:

1. The Board does not post meeting agendas with meeting notices.
2. The village clerk did not provide an agenda when one was requested.
3. The village clerk did not add all items a complainant asked to be added to the meeting agenda and items that were added to the agenda were not worded “verbatim” as requested by the complainant.
4. The time allotted for a complainant to speak on specific agenda items was limited.
5. A quorum of Board members engaged in a discussion via group text message.
6. Meeting minutes contain errors and are not complete.

DISCUSSION

The Act is a statutory commitment to openness in government.¹ “The purpose of the open meeting law is to insure that public policy is formulated at open meetings of the bodies to which the law is applicable.”² The open meetings laws should be broadly interpreted and liberally construed to obtain their objective of openness in favor of the public.³ Both the Attorney General and the county attorney of the county in which the public body ordinarily meets have the authority to enforce the Act.⁴ However, only the district court can declare the act of a public body void.⁵

1. Posting Meeting Agendas

Complainants allege that the Board violated the Act by not posting an agenda along with the meeting notice in three public places. The Act requires public bodies to “give reasonable advance publicized notice of the time and place of each meeting.”⁶ Villages are permitted to give notice either by “[p]ublication in a newspaper of general circulation within the public body’s jurisdiction” or by “[p]osting written notice in three conspicuous public places” in the village.⁷ The 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.”⁸ Thus, if the notice includes a

¹ *Wasikowski v. Nebraska Quality Jobs Board*, 264 Neb. 403, 648 N.W.2d 756 (2002).

² *Pokorny v. City of Schuyler*, 202 Neb. 334, 339, 275 N.W.2d 281, 284 (1979).

³ *State ex rel. Upper Republican NRD v. District Judges*, 273 Neb. 148, 728 N.W.2d 275 (2007).

⁴ Neb. Rev. Stat. § 84-1414(2).

⁵ Neb. Rev. Stat. § 84-1414(1).

⁶ Neb. Rev. Stat. § 84-1411(1)(a).

⁷ Neb. Rev. Stat. § 84-1411(1)(b)(ii)(A)-(B).

⁸ Neb. Rev. Stat. § 84-1411(1)(e).

statement explaining where the agenda may be obtained, the public body is not required to also post the agenda with the notice.⁹

The Board has provided evidence that it posts meeting notices in three public places in the village (i.e., Village Hall, Morse Bluff Post Office, and Bottom Road Bar). The meeting notices include a statement that “[a]n agenda for such a meeting, kept continuously current, is readily available for public inspection at the office of the Village Clerk during normal business hours.” The notices also include the clerk’s phone number. As discussed in more detail in the next section, the clerk’s residence serves as the principal office of the Board. We find that the Board complied with the Act by posting notice in three public places that included the statement required by § 84-1411(1)(e). We note that the Board has informed our office that, going forward, it intends to post an agenda of subjects known at the time along with the meeting notice. While it is not required to post the agenda with the notice under the Act, the Board has indicated that it will do so “to avoid any confusion as to business hours and availability to review at the principal office.”

In addition, Mr. Vosler alleges that the Board violated the Act by continuing to hold a meeting after he objected that the meeting was held in violation of the Act because the agenda had not been posted along with the meeting notice. Because the meeting notice included the statement required by § 84-1411(1)(e), we do not find that the meeting was held in violation of the Act.

2. Agenda Not Provided Upon Request

Mr. Vosler alleges that he requested a copy of an agenda from the village clerk the day before a meeting and did not receive one prior to the meeting. This request was made via text message. In its response, the Board explained that the Village Hall, where Board meetings are held, is small and does not have office equipment or restroom facilities. For this reason, the Board has allowed the clerk to use her personal residence as her office. The village does not have a separate principal office. Village records, including meeting agendas, are maintained at the clerk’s office in her personal residence. Meeting notices include the clerk’s phone number and indicate that a copy of the agenda is available for public inspection at “the office of the Village Clerk during normal business hours.” The notices do not include the clerk’s address.

We have viewed the video of the Board’s January 20 meeting provided to us by Mr. Vosler on January 22. Mr. Vosler stated at this meeting that he went to the clerk’s residence during normal business hours to inspect the agenda, but found nothing. While there is no provision that requires the agenda to be posted, the statute requires the public body to make the agenda “readily available for public inspection.” In this respect, the

⁹ *Id.*

Board should have done more to ensure that complainants and any other interested persons had access to the agenda. In any event, Ms. Freeman-Caddy represents that agendas will now be available at the same time, and in the same places, notices are posted.¹⁰

3. Sufficiency and Selection of Agenda Items

Mr. Vosler alleges that his request to add several items to the Board's agenda was not honored. While some of the requested items were placed on the agenda, Mr. Vosler further alleges that the clerk did not copy the items verbatim when drafting the agendas. With respect to agendas, § 84-1411(1)(e) states, in part, that

[a]genda 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 (i) twenty-four hours before the scheduled commencement of the meeting or (ii) 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.

In addition, § 84-1412(3) states, in part, that “[n]o public body shall require . . . that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda.”

Apart from the provisions set forth above, there is no provision in the Act that requires a public body to grant an individual's request to be placed on the agenda, or to do so in a manner prescribed by the requester. As discussed above, the process by which a public body sets its agenda is a matter of *governance*. It does not implicate the Act. However, we note that the Board placed Mr. Vosler on its agendas for the January 10, 20, and 23 meetings to discuss open meetings concerns and “concerns regarding communications between Kathy Mensik and Therese Busse.” We find such items to be sufficiently descriptive to give the public reasonable notice of what would be discussed in accordance with § 84-1411(1)(e).

4. Limited Public Participation

Mr. Vosler alleges that the Board improperly limited his time to speak at the January 23 meeting to three minutes. In this respect, agenda items 4 and 5 state:

¹⁰ We strongly suggest that the Board post a current agenda if the agenda is amended prior to the scheduled meeting.

- (4) Sandy Vosler has made statements about alleged violations of the Open Meetings Act by this Village Board at the previous two January meetings. He wishes to make more statements about these alleged violations. He will be given 3 minutes to make his statement.
- (5) Sandy Vosler has requested to address the Village of Morse Bluff board meeting with his concerns regarding communications between Kathy Mensik and Theresa Busse. He will be given three minutes to make his statement.

According to Ms. Freeman-Caddy, the Board chair implemented a three-minute period for presenting concerns at the January 23, 2023, meeting, and the Board subsequently adopted a resolution governing public participation at its meeting held on March 7, 2023. That resolution limits public comment to five minutes per person and establishes a process through which members of the public may suggest agenda items. These rules will apply equally to all members of the public going forward.

Under § 84-1412(2), public bodies have the authority “to make and enforce reasonable rules and regulations regarding the conduct of persons attending [or] speaking at . . . its meetings[.]” Moreover, the Board chair has some discretion when developing agendas for the Board and presiding over the Board’s meetings. The fact that Mr. Vosler’s presentations may have been limited by the Board chair to three minutes does not constitute a violation of the Act.

5. Group Text Messages

Mr. Vosler alleges that a quorum of Board members violated the Act by communicating through group text messages, and provided this office with screen shots of a text string that appears to involve three members of the Board. The Act prohibits the secret formation of public policy by requiring meetings of public bodies to be open to the public. To determine if there has been a violation of the Act, we must first consider whether the group text messages constituted a meeting. Section 84-1409(2) defines meeting as “all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.” However, there is no meeting, even though a quorum is present, when there is no formation of public policy.¹¹ A group text message involving a quorum of the members of a public body could potentially constitute a meeting under the Act if it is used to formulate public policy outside the view of the public.

¹¹ *Schauer v. Grooms*, 280 Neb. 426, 447, 786 N.W.2d 909, 926 (2010).

Additionally, the use of virtual conferencing, emails, and other electronic communication to circumvent the Act is prohibited.¹²

Our review of the text messages provided did not find any discussion of public policy. The text message string included three Board members as recipients but only two Board members sent messages. In the messages one Board member informed the group that the Board received two applications for the position of village clerk. The Board member then attached images of those two applications and explained, “We aren’t voting as we haven’t interviewed yet but I wanted to make sure you had these.” There is no further discussion of the applicants or the open position. A subsequent message reminds the recipients to “bring your packet along to the meeting tonight at 7 o’clock. Hopefully you have had time to review all the documents so we don’t need to spend a ton of time on them.” While these messages relate to Board business, there was no formation of public policy. Instead, the distribution of materials and reminders to bring materials to meetings are organizational communications that do not violate the Act.

The other topic discussed in the text messages we reviewed relates to statements purportedly made by Mr. Vosler about circumstances surrounding the resignation of the village clerk. Mr. Vosler refutes he made any such comments. These particular texts do not attempt to formulate public policy and, therefore, do not constitute a meeting under the Act. While we do not find that any of these conversations violated the Act, we note that it is incumbent upon the members of Board to ensure that public business is never discussed among a quorum of members outside of a public meeting.

6. Meeting Minutes Contain Errors and Are Incomplete

Mr. Vosler alleges that the Board violated the Act by issuing false and incomplete minutes. He alleges that the village clerk “slander[ed] the residents of Morse Bluff during meetings on record to only omit the activity from the minutes presented to the public.” He asserts that “[i]t is not unreasonable to suspect that what is documented in the minutes is only 50% of what’s discussed at a meeting.” In addition, he claims that, on one occasion, the village clerk falsely stated in the minutes that a Board member had voted “yes” on a motion when he had, in fact, not voted at all.

In the Board’s response, Ms. Freeman-Caddy explained that the clerk prepares the draft minutes and presents them to the Board at the next regular meeting. The Board then reviews the minutes and decides whether changes need to be made before the minutes are approved. The minutes of the February 15 regular Board meeting show that the minutes from the January 10 regular meeting were read aloud. The Board discussed the fact that a video of the January 10 meeting showed that Tyler Vyhldal had not seconded a motion as the minutes stated he had. As a result, the Board did not approve

¹² Neb. Rev. Stat. § 84-1411(3).

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the minutes, and instead asked for them to be corrected and placed on the agenda for the next regular meeting.

The Act requires that every public body keep minutes of all meetings. The meeting minutes must include “the time, place, members present and absent, and the substance of all matters discussed.”¹³ The Act does not require public bodies to keep verbatim transcripts of all meetings. The amount of detail included in meeting minutes is largely up to the public body itself so long as they contain “the substance of all matters discussed.” The Board has a process to review and correct minutes before they are approved that seems to have been successful in the instance Mr. Vosler has described. For these reasons, we find no violation of the Act related to these allegations.

CONCLUSION

For the reasons stated above, we are unable to conclude that any of the Board’s actions constituted a clear violation of the Act. Since no further action by this office is required, we are closing this file. Any complainant who disagrees with our analysis may wish to discuss this matter with a private attorney to determine what additional remedies, if any, are available under the Open Meetings Act.

Sincerely,

MIKE HILGERS
Attorney General



Elizabeth O. Gau
Assistant Attorney General

cc: Maureen Freeman-Caddy (via email only)
03-071-30

¹³ Neb. Rev. Stat. § 84-1413.