



STATE OF NEBRASKA
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August 8, 2022

Rodney M. Confer
Knudsen Law Firm
3800 VerMaas Place, Suite 200
Lincoln, NE 68502

RE: *File No. 21-M-148; Nebraska Environmental Trust Board; W. Don Nelson and Jon H. Oberg, Complainants*

Dear Mr. Confer:

On December 13, 2021, you submitted on behalf of W. Don Nelson and Jon H. Oberg a complaint alleging violations of the Open Meetings Act¹ (“Act”) by the Nebraska Environmental Trust Board (“Board”) during its meeting held on December 2, 2021. You alleged that at this meeting “the Trust Board voted to provide bonuses to certain Trust employees, and also voted to extend the term of the Trust’s interim executive director. Neither subject appeared on the published agenda for the meeting.” You also asserted that such actions violated the agenda requirements set out in Neb. Rev. Stat. § 84-1411(1)(e), and constituted “the very same conduct that occurred at their November 5, 2020 meeting that the District Court of Lancaster County held to be an actionable violation of the Nebraska Open Meetings Act.”

In accordance with our normal procedures, we requested a response from the Board after we received your complaint, and we subsequently received a response from Nebraska Environmental Trust Executive Director Karl L. Elmshaeuser. Mr. Elmshaeuser informed us that the Board took appropriate actions during its January 6, 2022, meeting to address the complaint, and provided us copies of the meeting agenda and draft minutes in support.

¹ Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Supp. 2021), amended 2022 Neb. Laws LBs 742, 908 and 922.

We have reviewed the January 6, 2022, meeting agenda and the minutes approved by the Board at its February 3, 2022, meeting. The Board listed the following items under #2 of the agenda:

2. December 2, 2021, meeting minutes
 - a. Ratify December 2, 2021, vote to provide additional compensation to certain Trust staff
 - b. Ratify December 2, 2021, vote to extend the term of the Trust's interim executive director
 - c. Ratify December 2, 2021, vote to go into executive session
 - d. Approve December 2, 2021, meeting minutes.

The minutes for agenda item #2 contained the following statements:

Background on agenda items 2.a & 2.b

At the 4th quarter meeting held December 2, 2021, the Board took action on two items not specifically addressed on the agenda. As recommended by counsel, the Board is ratifying the actions by specifically listing them on the agenda, restating the motion, and conducting a roll call to affirm the action was taken.

Background on agenda item 2.c

At the 4th quarter meeting held on December 2, 2021, a unanimous consent was given to go into closed session and the Board did not take a roll call vote. As recommended by counsel, the Board is ratifying the action to enter closed session by specifically listing it on the agenda, restating the motion, and conducting a roll call vote to affirm the action was taken.

According to the minutes, actions consistent with these statements were taken by the Board.

In *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979) [*Pokorny*], a taxpayer filed suit against the city seeking to void actions of the city council relating to a land purchase due to alleged violations of the open meetings law. The court found that the city council had violated the law with respect to two special meetings due to inadequate notice and an improper closed session. However, the court disagreed with the trial court's order permanently enjoining the city "from carrying out any action authorized' at the [invalid] meetings," finding such an order would permanently prevent the purchase of the land and appeared contrary to "the intent or purpose of the public meetings law." *Id.* at 341, 275 N.W.2d at 285. Instead, the court held that "[i]t is a general principle of law that where a defect occurs in proceedings of a governmental body, ordinarily the defect may be cured by new proceedings commencing at the point where the defect occurred." *Id.* The court found that actions taken by the city council at a

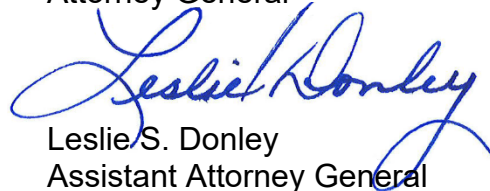
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subsequent meeting cured the defects arising from the invalid special meetings.² *Id.* at 342, 275 N.W.2d at 285.

In the present case, the Board took affirmative steps to cure the violations which occurred at its December 2, 2021, meeting by reconsidering those matters at the January 6 meeting. The items at issue were listed on the agenda, the Board discussed the matters, and took a roll call vote to ratify its previous actions. Since the Board has cured the open meeting issues, no further action by this office is necessary. However, we will take this opportunity to remind Board members “that the purpose of the agenda requirement of the public meetings laws is to give ‘some notice of the matter[s] to be considered at the meeting so that persons who are interested will know which matters will be for consideration at the meeting.’” *Schauer v. Grooms*, 280 Neb. 426, 443, 786 N.W.2d 909, 923 (2010) (quoting *Pokorny*, 202 at 339-40, 275 N.W.2d at 285). Members of the public have a legal right to openness in government, which requires a complete and sufficiently descriptive agenda.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Karl L. Elmshaeuser
Justin D. Lavene
49-3002-30

² Those actions included: Full attendance by members of the city council; the meeting notice posted in three places one week before the meeting; a sufficiently stated agenda item; a reading of the contract by the city attorney to the city council in open session; and discussion of the contract by the city council and a final vote to approve.