



STATE OF NEBRASKA  
**Office of the Attorney General**

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**DOUGLAS J. PETERSON**  
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January 13, 2017

James A. Thomson  
[REDACTED]

RE: *File No. 16-M-118; Village of Callaway; James A. Thomson, Complainant*

Dear Mr. Thomson:

This letter is in response to your correspondence dated April 5, 2016, in which you requested that this office investigate certain alleged violations by the Village of Callaway Board of Trustees (the "Board") of the Nebraska Open Meetings Act (the "Act"), Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2014, Cum. Supp. 2016). 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 the attorney for the Board, Julianna Jenkins. We have now had an opportunity to review your allegations and the Board's response in detail, and our conclusions are set out below.

### **FACTS**

Our understanding of the facts in this case is based upon your correspondence, the minutes of the relevant meetings, and the response from the Board. Your Open Meetings Act concerns relate specifically to public postings prior to and after three different meetings of the Board which were held on November 2, 2015, February 15, 2016, and February 18, 2016.

#### November 2, 2015

The Board met in special session. The minutes provided by you and the Board state that notice of the meeting was given to the public in advance by publishing in the Callaway Courier and posting a notice in three locations around the Village. The minutes also reflect that the notice contained a provision indicating that the agenda was kept current and available for public inspection at the office of the Village Clerk.

The minutes reflect you were present to interview for the Utility Superintendent position. A motion was made and the Board went into executive session for approximately twenty-six minutes, though no reason was stated why the Board was going into closed session. Then, by motion, the Board returned to open session. A motion made to offer you the position was passed by all five Board members, after which the meeting was adjourned.

#### February 15, 2016

The Board met in emergency session on February 15, 2016 at 1:00 p.m. The minutes indicate the emergency session was held to discuss personnel issues. You explain the Board discussed your Employee Warning Report of a co-worker on February 11, 2016. The Board moved into executive session, though the minutes do not reflect the reason for the closed session. After returning to open session, no formal action was taken, and the meeting was adjourned.

#### February 18, 2016

On the morning of February 18, 2016, the Board Chair informed you of an emergency Board meeting set for 2:00 p.m. that same day. You and the Board members were the only people present at the meeting. The Board moved into executive session, though the minutes do not reflect the reason for the closed session. You were asked if you were going to resign or be terminated and you responded that you did not know why you would resign. At that point the Chair escorted you to the front office, asked you to turn over all City property to the Village Clerk, you clocked out, gave your timecards to the Chair, and left. The Board moved out of executive session and then voted to terminate your employment before adjourning the meeting.

The Board states the immediate termination was necessary because utility employees were threatening to walk off the job due to arguments between you and the other utility employees. The Board believed the circumstances required immediate action to avert the possible interruption of the work of the Village, including snow removal, utility, and electric maintenance. According to the Board, if the employees quit, the utility supervisor alone could not operate the snow removal machinery or Village Power Plant.

### **DISCUSSION**

Your stated Open Meetings Act concerns involve public postings prior to and after the meetings. Neb. Rev. Stat. § 84-1411(1) requires that a "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." The November 2 meeting appears to comport with these requirements. The minutes reflect the fact and method of notice, stating that notice was published in the newspaper and posted in multiple locations around the Village.

The general requirement for reasonable advance public notice is excused in the case of an emergency meeting. Neb. Rev. Stat. § 84-1411(5). Both the February 15 and February 18 meetings were called as emergency meetings. An emergency has been defined as “[a]ny event or occasional combination of circumstances which calls for immediate action or remedy; pressing necessity, exigency; a sudden or unexpected happening; an unforeseen occurrence or condition.” *Steenblock v. Elkhorn Tp. Bd.*, 245 Neb. 722, 726, 515 N.W.2d 128, 131 (1994). In *Steenblock*, the Court found that giving an employee two weeks’ notice establishes that the meeting was not an event calling for immediate action, or an unforeseen occurrence or condition, since the reasons given for termination were based upon past performance by the employee.

In contrast, in this case it appears the Board called an emergency session the next business day, February 15, after learning of the Warning Report and hearing concerns from Village employees. With threats of employees quitting, which would render the Village without adequate resources to, among other things, run the Village Power Plant, the Board called the emergency meeting on February 18 for the purposes of immediate action in the face of the pressing necessity to retain enough employees to maintain the Village’s core functions. Unlike the actions in *Steenblock*, the February 15 and February 18 meetings do not appear to clearly fall outside the parameters of an emergency meeting under the Act.

When such an emergency meeting is held, the nature of the emergency shall be stated in the minutes and any formal action taken in the meeting must pertain to the emergency for which the meeting was held. Neb. Rev. Stat. § 84-1411(5). The requirements for emergency meetings minutes differs from those for a regular meeting. Minutes for emergency meetings must specify the nature of the emergency and any formal action taken during the meeting and must be made available to the public no later than the end of the next regular business day. *Id.*

The minutes contain the required content. However, you allege that you saw no public postings after the February 15 meeting and saw only a February 25 newspaper article about the February 18 meeting. The requirement for emergency meeting minutes is that the minutes be available to the public no later than the end of the next regular business day, not that they be published in the same manner as a meeting notice. No evidence provided to this office indicates the Board clearly violated this requirement of the Act.

Though no allegations or evidence presented to us indicates that the minutes were not actually available, the Attorney for the Callaway Village Board stated, “[t]he village clerk has these records available for inspection well within the 10 day requirement set forth in the statute. The Village Clerk also publishes the minutes for all regular and special meetings in the local newspaper.” We would, through this letter, remind the Board that for emergency meetings, pursuant to Neb. Rev. Stat. § 84-1411(5), the minutes should

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be available to the public the next business day, not within the ten business days allowed for non-emergency meetings.

Finally, no allegations about the closed or executive session are before us. However, after a review of the meeting minutes, we would also remind the Board that when moving into a closed or executive session, the Board needs to state the reason for such action as outlined in Neb. Rev. Stat. § 84-1410(1) which requires the "subject matter and the reason necessitating the closed session shall be identified in the motion to close." It is not clear the Board is not stating the reason, but the meeting minutes do not reflect that this practice is being properly observed. If it is, then the minutes should so reflect. If not, then the Board needs to comply with this provision of the Act and the reason necessitating the closed or executive session should be reflected in the minutes.

Since we have concluded that the Village of Callaway Board of Trustees did not clearly violate the Open Meetings Act regarding notices or minutes for its November 2, 2015, February 15, 2016, and February 18, 2016 meetings, no further investigation by our office is necessary, and we are closing this file. If you disagree with our analysis set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Marna Munn  
Assistant Attorney General

cc: Julianna S. Jenkins, Village of Callaway