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August 12, 2019

Via email to nesignal1@icloud.com
Greg Scellin
The Nebraska Signal

RE: *File No. 19-M-116; Geneva City Council; Greg Scellin, The Nebraska Signal, Complainant*

Dear Mr. Scellin:

This letter is in response to your complaint received by us in which you have requested that this office investigate alleged violations of the Nebraska Open Meetings Act (hereinafter, the "Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2018), by the Geneva City Council ("City Council"). As is our normal practice with such complaints, we forwarded copies of your complaint to the public body which is the subject of the complaint. We have received a response from the attorney for the City of Geneva, David C. Solheim, and have now had an opportunity to review your complaint, the City Council's response, and the accompanying documentation in detail. Our conclusion in this matter is set forth below.

FACTS

Our understanding of this matter is based upon your complaint, its supporting documentation, and the response we received from the City Council. Your complaint concerns the May 20, 2019 meeting of the City Council and a closed session called for the purpose of "strategizing a real estate transaction" during the agenda item listed as "Consideration of Sale of Property at 806 G Street." You believe that the subject matter for this closed session was improper and that the length of time the City Council spent in closed session, 46 minutes, was unreasonable.

The City Council denies any violation of the Act relating to your complaint and informs us that this property had been discussed in a number of its meetings in the prior two years, all in open session. The City came into ownership of the property by way of default on an economic development loan and plans to re-sell the property in order to recover some of the money loaned to the prior owner. According to the City Council, "this strategy and series of events" was discussed at prior meetings and on May 20,

2019, the City Council was preparing to proceed with the sale of the property. The minutes reflect that no action was taken following the closed session and that "sale of property at 806 G Street will be discussed at the June 3, 2019 council meeting." Your complaint indicates that the City Council did discuss and take action regarding this property at the June 3, 2019 City Council meeting. Our conclusions are set out below.

ANALYSIS

Neb. Rev. Stat. § 84-1408 (2014) of the Act provides:

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

The primary purpose of the open meetings law is to ensure that public policy is formulated at open meetings. *Marks v. Judicial Nominating Comm.*, 236 Neb. 429, 461 N.W.2d 551 (1990). The Nebraska open meetings laws are a statutory commitment to openness in government. *Wasikowski v. The Nebraska Quality Jobs Board*, 264 Neb. 403, 648 N.W.2d 756 (2002); *Grein v. Board of Education of the School District of Fremont*, 216 Neb. 158, 343 N.W.2d 718 (1984).

Your complaint concerns a closed session of the City Council on May 20, 2019 called to discuss the agenda item "Consideration of Sale of Property at 806 G Street." Neb. Rev. Stat. § 84-1410 of the Act provides, in pertinent part:

(1) [a]ny public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. Closed sessions may be held for, but shall not be limited to, such reasons as:

(a) Strategy sessions with respect to collective bargaining, real estate purchases, pending litigation, or litigation which is imminent as evidenced by communication of a claim or threat of litigation to or by the public body;

(2) The vote to hold a closed session shall be taken in open session. The entire motion, the vote of each member on the question of holding a closed session, and the time when the closed session commenced and concluded shall be recorded in the minutes. If the motion to close passes, then the presiding officer immediately prior to the closed session shall restate on the record the limitation of the subject matter of the closed session. The public body holding such a closed session shall restrict its consideration of matters during the closed portions to only those purposes set forth in the motion to close as the reason for the closed session. The meeting shall be reconvened in open session before any formal action may be taken. For purposes of this section, formal action shall mean a collective decision or a collective commitment or promise to make a decision on any question, motion, proposal, resolution, order, or ordinance or formation of a position or policy but shall not include negotiating guidance given by members of the public body to legal counsel or other negotiators in closed sessions authorized under subdivision (1)(a) of this section.

The minutes of this meeting reflect that the City Council entered into closed session for approximately 45 minutes “for the purpose of strategizing a real estate transaction at 806 G Street.” You do not believe that the topic discussed was proper for a closed session and allege that the time spent in closed session was excessive for this discussion.

In its response, the City Council denies any violations of the Act in the manner in which it conducted the closed session of May 20, 2019. The City Council states that it discussed the most advantageous way in which to sell the property and financial considerations relating to the sale of the property, including the fair market value of the property, the potential asking price for the property, and the price at which the City may be willing to sell the property. The City denies any impropriety in the discussions that occurred in the closed session.

We first note that the Act requires both the subject matter and reason for the closed session in the motion to close. While the City Council stated the subject matter for the closed session, i.e. strategizing a real estate transaction at 806 G Street, that is insufficient to meet the requirements of the Act. The City council must also state the reason for the closed session, whether it is held for the protection of the public interest or prevention of needless injury to the reputation of a person. The Act also requires that if a motion for closed session passes, the “limitation of the subject matter of the closed session” shall be restated on the record, which is not reflected in the minutes of this meeting. As the City Council took no action as a result of the closed session, we will take no action on these technical violations of the Act. We will, however, remind the City Council, through a copy of this letter to its attorney, that these requirements must be met for future closed sessions of the City Council.

As to the substance of your complaint, Neb. Rev. Stat. § 84-1410(1) provides that “[c]losed sessions may be held for, but shall not be limited to, such reasons as: strategy sessions with respect to collective bargaining, real estate purchases” While this is not an exhaustive list of reasons acceptable for closed sessions, it certainly provides guidance as to what the Legislature deemed appropriate. The term “strategy sessions” and the list following suggest that the reasons for a closed session are to be based upon financial considerations or negotiations. While we have previously stated that a closed session is not appropriate when a public body merely wishes to have a general discussion of the policy or merits of buying or selling a piece of property, it is appropriate for active negotiations or for meeting to discuss the price for the sale of property.¹ We have also previously stated that a closed session must be clearly necessary to serve the public interest, which with respect to real estate, would be the economic concerns surrounding the potential purchase or sale of property. The “public interest” is in the public body ensuring it enters into the most economically advantageous contract, not merely whether the city should investigate or continue to negotiate the purchase or sale of property.²

The subject matter provided by the City Council for discussion during closed session on May 20, 2019, that of a strategy session with respect to the proposed sale of property at 806 G Street, is a proper subject matter for discussion in closed session; it is a specific subject matter that the Nebraska Legislature has determined is appropriate for closed session discussions. In prior open meetings, it appears that the City Council discussed the general merits of being deeded the property and reselling the property to recoup a portion of the defaulted loan. On May 20, 2019, in closed session, the City Council then discussed the most financially advantageous way in which to sell the property, the fair market value of the property, and other financial considerations related to the sale of the property. We can find no violations as to the topic which the City Council set forth for discussion in its closed session on this date. Additionally, we cannot conclude that meeting for 45 minutes in closed session to discuss this topic was excessive.

CONCLUSION

For the reasons stated above, we do not believe the City Council has violated the Act as to the subject matter of the closed session held on May 20, 2019. While we remind the City Council to ensure that all portions of the Act are met as to its motion to close, this is a technical violation for which we will take no action against the City Council. Since we have determined that no further action by this office is appropriate, we are closing this file. If you disagree with our analysis, you may wish to discuss this

¹ See File No. 10-M-122; *City of Seward City Council; Robert Blevens* (January 26, 2011). A copy of this disposition letter can be found at <https://ago.nebraska.gov/disposition-letters>.

² See File No. 12-M-122; *Gretna City Council; Complainant Wayne Robb* (November 27, 2012). A copy of this disposition letter can be found at <https://ago.nebraska.gov/disposition-letters>.

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matter with 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

A handwritten signature in blue ink, appearing to read "Natalee J. Hart". The signature is fluid and cursive, with the first name being the most prominent.

Natalee J. Hart
Assistant Attorney General

cc: David C. Solheim

02-740-29