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January 22, 2020

Alan Charlton

Via email only to: [REDACTED]

RE: *File No. 19-M-127; Village of Giltner; Complainant Alan Charlton*

Dear Mr. Charlton:

This letter is in response to your complaint in which you have requested that this office investigate alleged violations of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2018, Supp. 2019), by the Village of Giltner Village Board ("Board"). As is our normal practice with such complaints, we forwarded a copy of your complaint and its supporting documentation to the public body which is the subject of the complaint. We received a response from the attorney for the Board, Kent E. Rauert, and have now had an opportunity to review in detail your complaint, the accompanying documentation, and the Board's response. Our conclusions in this matter are set forth below.

FACTS

Our understanding of this matter is based upon your complaint and the response we received from the Board. Your complaint concerns the October 14, 2019 meeting of the Board. You allege that the meeting was not properly advertised, as the notice published in the newspaper provided a start time for the meeting of 6:00 p.m. while the notice posted in the Post Office indicated a start time of 6:30 p.m. The actual start time of the meeting was 6:30 p.m. Additionally, you complain that the agenda was not available the Friday preceding the meeting, or the day of the meeting, as the Village offices were closed those days. October 14, 2019 was Columbus Day, a federal and local governmental holiday. Finally, you complain that the Board did not make documents available at the meeting relating to agenda items being discussed at the meeting, specifically the amendment to the Village bylaws.

The Board, through its attorney, responded to your complaint. First, the Board indicated to us that the Village code does not specify how notice is to be given for meetings, but that the method for notice is to be "designated by the Chairperson if the Board has not designated some other method." The Board publishes notice in the *Aurora News-Register*, as well as posting public notice at the public library, the post

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office, and the community center in Giltner. The Board posted notice of the October 14, 2019 meeting on September 24, 2019 at the three local locations and published notice in the designated newspaper on October 9, 2019.

The Board admits that the publication notice as found in the newspaper indicated the start time for the meeting was 6:00 p.m, when it was actually 6:30 p.m. The Board attributes this to a "scrivener's error" and the recent change in the meeting start time. Board meetings had previously started at 6:00 p.m., however, the Board elected to change that start time to 6:30 p.m. beginning with its meeting in September 2019. The Board indicates that you were present for the August 2019 meeting in which the start time was adopted by the Board. Additionally, the Board points out that the actual 6:30 p.m. start time was later than the time as published in the paper, and no members of the public, therefore, missed any part of the meeting due to the incorrect published time.

As to your complaint that the agenda was unavailable prior to the October 14, 2019 meeting, the Board states that the agenda was available beginning on September 24, 2019. The Board states that the agenda was not available the day of the meeting at the Village offices, as those offices were closed for Columbus Day. The Board also advises that the Village Clerk used her vacation time beginning in September to take Fridays off for the remainder of the year. Thus, the agenda was also not available for inspection the Friday prior to the meeting, as there were no "business hours" on that day because the Village offices were closed.

ANALYSIS

Neb. Rev. Stat. § 84-1408 (2014) of the Nebraska Open Meetings 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).

Notice of Meetings

We will first address your allegation that the notice of the October 14, 2019 Board meeting was in violation of the Open Meetings Act because it contained an incorrect meeting start time. The Open Meetings Act requires a public body to 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.” Neb. Rev. Stat. § 84-1411(1) (2014). 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.” *Id.* The agenda may not be altered, except for items of an emergency nature, within 24 hours of the meeting. *Id.* “Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting.” *Id.*

As an initial matter, it is not clear to us from the response of the Board whether the Board has complied with the requirement to designate a method of notice at an open meeting and record that method in its minutes. The Board’s statement that the Chairperson designates how notice is to be given “if the Board has not designated some other method” indicates to us that perhaps the Board has not undertaken this responsibility under the Open Meetings Act. If the Board, at an open meeting, has not designated a method of notice, which is then recorded in its minutes, it should do so at its next regularly scheduled meeting.

As to the error appearing in the notice of the time of the meeting, while technically it would be a violation of the Open Meetings Act to have an incorrect time appearing in the notice, as the public body is required to give notice of the *time* and place of its meetings, we understand there were extenuating circumstances here. First, the notice posted in the three locations in the Village contained the correct start time; only the newspaper notice was incorrect. Additionally, the Board had previously held its meetings at 6:00 p.m. and had only recently moved them to 6:30 p.m. We believe that the error in time appearing in the newspaper notice was either a typographical error, or an honest mistake made by the Village Clerk, who had become accustomed to a 6:00 p.m. start time. Since the start time as noticed in the newspaper was earlier than the actual start time, members of the public were not harmed by the later start time, as they still had full access to the entirety of the meeting at issue. Therefore, we will remind the Board to ensure that its notices are entirely accurate before posting or publishing them, but will take no action against the Board for this portion of your complaint.

Agenda availability

As indicated above, if the notice does not contain an agenda of subjects, it must include a statement that the agenda is available for public inspection at the principal office of the public body during normal business hours. Neb. Rev. Stat. § 84-1411(1). In

this case, the notice stated that the agenda “kept continually current, is available for public inspection at the office of the Village Clerk.” Maintaining the agenda at this location is acceptable under the Open Meetings Act. The agenda is subject to availability during normal business hours. The Board represents to us that the agenda was available beginning September 24, 2019, the day the notice was posted in three public places around the Village of Giltner. The Village Clerk’s office did not have business hours the business day prior to, or the day of, the meeting. However, members of the public had eleven business days from the day the agenda was available and notice posted in the Village, and one business day after the publication of the notice in the paper to view the agenda. We believe the Village has fulfilled its responsibilities under the Open Meetings Act as to the availability of the agenda and there is no violation of the Open Meetings Act related to this portion of your complaint.

Availability of documents at Board meetings

You also allege that the October 14, 2019 meeting contained an agenda item to amend the bylaws of the Village, but that the documents being reviewed by the Board as to this agenda item were not available for public viewing at that meeting. The Board has provided no response as to this portion of your complaint. Neb. Rev. Stat. § 84-1412(8) provides: “Public bodies shall make available at the meeting or the in-state location for a telephone conference call or videoconference, for examination and copying by members of the public, at least one copy of all reproducible written material to be discussed at an open meeting.” While you state that the Board is not complying with this provision of the Open Meetings Act, we have no evidence of this, other than your statement. Consequently, without more, we cannot find that the Board has violated the Open Meetings Act. We will take this opportunity to remind the Board of its responsibilities as to the availability of documents being discussed in open session to ensure its compliance with this provision moving forward.

Meeting “Sign in sheet” for members of the public

In its response to us, the Board included a “sign in sheet” for its August 12, 2019 meeting in support of its argument that you were present for the meeting at which the start time of future Board meetings was changed. However, the Board should cease the practice of requiring members of the public to sign in to meetings. Neb. Rev. Stat. § 84-1412(3) provides that “[n]o public body shall require members of the public to identify themselves as a condition for admission to the meeting . . . The body may require any member of the public desiring to address the body to identify himself or herself.” Consequently, the Board may not require observers of its meetings to “sign in” to the meeting, but should those members of the public wish to address the Board, during a designated public comment period, they can be asked to identify themselves for the record. We trust that the Board will end its practice of the “sign in sheet” beginning with its next meeting, and we will take no further action concerning this matter.

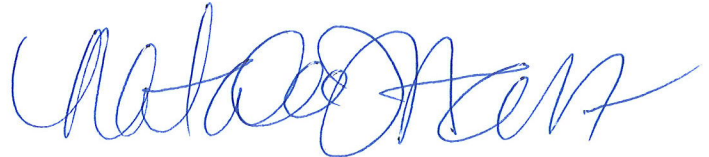
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CONCLUSION

For the reasons stated above, we conclude that the Board has not violated the Open Meetings Act as to the notice and availability of its agenda for the meeting in question. We also cannot determine whether the Board has violated the Open Meetings Act as to the availability of documents at the meeting, but will remind the Board of its responsibilities to have all documents being discussed by the Board available for members of the public at each of its meetings. We also advise the Board that it cannot require members of the public to sign in at a public meeting. However, since no further action by our office is necessary, we are closing this file. If you disagree with our analysis, you may wish to discuss this 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



Natalee J. Hart
Assistant Attorney General

cc: Kent E. Rauert