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DOUGLAS J. PETERSON
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June 17, 2021

Via email at [REDACTED]
David Morgan

RE: *File No. 20-M-120; Village of Alvo Board of Trustees; David Morgan, Complainant*

Dear Mr. Morgan:

This letter is in response to your correspondence emailed to our office on July 23, 2020, in which you allege violations of the Open Meetings Act ("Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2020), amended 2021 Neb. Laws LB 83, §§ 11-14, by the Village of Alvo Board of Trustees ("Board"). In accordance with our normal procedure with respect to such complaints, we sent a copy of your complaint materials to the Board chair, Robin LaPage, requesting a response. On August 24, 2020, we received a response to your complaint on behalf of the Board from then Village Attorney Roger K. Johnson. We have now had an opportunity to review your allegations and the Board's response in detail, and our conclusions are set out below.

YOUR COMPLAINT

You indicate that you received an announcement for a "Town Hall Meeting," the purpose of which was "to allow citizens to communicate with Alvo Village Board members at a meeting outside the normal meeting schedule and address questions and comments from the public." You indicate that your wife attended the meeting and found that none of your concerns were on the agenda. In this regard, Board chair LaPage explained that agenda items had to be submitted 24 hours before the meeting. You indicate that this requirement was not explained in the announcement. You state that "normal agenda items (approval of previous meeting minutes and bill payment approval[]) were included in what we thought was to answer questions from the public." You indicate that the Board has not responded to your questions, either "formally or informally." Lastly, you allege that "[d]uring regular Board meetings, citizen communications have not been allowed since early 2019."

THE VILLAGE'S RESPONSE

According to Mr. Johnson, the “announcement” you received was mailed with your water/sewer bills; it was not the official meeting notice required under the Act. The Board’s official public notice for the meeting in question was published in the Plattsmouth Journal on July 9, 2020. The notice reads, in pertinent part, as follows:

NOTICE IS HEREBY GIVEN that a special Town Hall meeting of the Chairperson and Village Board of the Village of Alvo, Nebraska will be held at 3:00 p.m. on Sunday, July 12, 2020, at 135 Main Street, Alvo, NE which meeting is open to the public Except for items of an emergency nature, the agenda shall not be enlarged later than twenty-four hours prior to the scheduled commencement of the meeting.

An agenda for the July 12 meeting was prepared and available for inspection at the clerk’s office at Village Hall, which is staffed most Saturday mornings. The town hall announcement further advised that “[t]he Board of Trustees cannot discuss or take action if your concern is not on the agenda.”

Mr. Johnson also provided us the email you sent to the village which included several questions and three statutes you wanted the Board to address at the July 12 meeting. Your email begins: “These questions and comments are from EMS personnel terminated by the Alvo Village Board in 2018, which terminated daily EMS protection for the residents of Alvo.” You emailed your request on Saturday, July 11, 2020, at 9:31 p.m., well within the twenty-four hours before the commencement of the July 12 meeting. Mr. Johnson states that “being sent on 17 hours and 31 minutes before the meeting, the agenda for the meeting could not be altered without violating the Open Meetings Act.” Mr. Johnson indicates that the concerns listed in your email relate to pending litigation in which you are the plaintiff and, after your own years of service on the Board, you surely would have known that such matters would not be discussed publicly. Mr. Johnson further states that there is nothing in the Act that requires public bodies to answer questions from a citizen.

With respect to public comment, Mr. Johnson provided us agendas for the Board meetings held on August 6, 2019, September 3, 2019, October 1, 2019, November 5, 2019, December 3, 2019, February 4, 2020, March 3, 2020, and July 22, 2020. All of these agendas contained the following item: “Citizens wishing to address the Village Board of Trustees who are not otherwise on the agenda (3 minutes limit).” In this regard, Mr. Johnson states that “other than during a short time when remote meetings were held during this pandemic, public comment is allowed at every meeting. The allegation is absolutely false.”

DISCUSSION

Neb. Rev. Stat. § 84-1408 (2014) of the 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 Act is a statutory commitment to openness in government. *Wasikowski v. 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). The open meetings laws should be broadly interpreted and liberally construed to obtain their objective of openness in favor of the public. *Schauer v. Grooms*, 280 Neb. 426, 786 N.W.2d 909 (2010).

We have carefully considered your complaint materials, together with the Village's response, which included the town hall "announcement," the published meeting notice, your July 11, 2019, email, and the various meeting agenda. Based on our review of those materials, we have made the following findings:

1. The July 12, 2020 meeting was properly noticed by publication in the Plattsmouth Journal. While not required by the Act, the notice contained a statement that the agenda could not be amended, except for emergency items, within twenty-four hours before the commencement of the meeting. This statement is consistent with Neb. Rev. Stat. § 84-1411(1)(e).¹ An agenda was prepared and available for inspection at the clerk's office at Village Hall.

2. You emailed your request to add various concerns and questions to the July 12, 2020, agenda within the twenty-four hours before the commencement of the meeting. Since those matters were not of an emergency nature, the Board could not add them to the agenda.

3. There is no provision in the Open Meetings Act that requires a public body to answer questions or address statutes received from a citizen. Moreover, you were then and are currently involved in litigation against the Village of Alvo.

¹ This subsection states, in pertinent part: "Except for items of an emergency nature, the agenda shall not be altered later than . . . twenty-four hours before the scheduled commencement of the meeting The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting."

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4. All of the agendas referenced above contained an item for public comment.

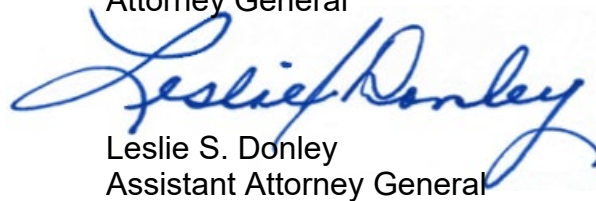
Consequently, we find no violation of the Open Meetings Act by the Board relating to the matters raised in your complaint.

CONCLUSION

Since we have determined that no violations of the Open Meetings Act occurred, no further action by this office is appropriate at this time, and we are closing this file. If you disagree with our analysis set forth above, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, may be available to you under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Robin LaPage
Roger K. Johnson

49-2720-29