



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

DOUGLAS J. PETERSON
ATTORNEY GENERAL

LAURA A. NIGRO
ASSISTANT ATTORNEY GENERAL

July 1, 2021

Via email at [REDACTED]
Kay Maresh

RE: *File No. 21-M-105; Valparaiso Village Board, Kay Maresh; Complainant*

Dear Ms. Maresh:

This letter is in response to your correspondence in which you requested that this office address alleged violations by the Valparaiso Village Board ("Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2020) ("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 the Board's attorney, Jovan Lausterer, who responded on behalf of the Board. We have now had an opportunity to review your allegations and the Board's response, and our conclusions are set out below.

ALLEGED VIOLATIONS

Upon review of your complaint, we have identified seven alleged violations of the Open Meetings Act, as follows:

1. The Board is not appropriately posting meeting notices/agendas;
2. The meeting agendas are not sufficiently detailed;
3. The Board is not properly allowing public comment at meetings;
4. The Board is communicating in secret via text messaging;
5. The Board had a special meeting and did not publish meeting minutes;
6. The Board did not provide proper notice for its January 27, 2021 special meeting; and

7. The Board took formal action during a closed session.

The remainder of your allegations against the Board are not related to the Open Meetings Act. The Attorney General does not have general supervisory authority over local political subdivisions such as a village. Therefore, we will not address the remainder of your allegations.

ANALYSIS

Posting of Meeting Notices/Agendas

Your complaint alleges that meeting agendas are not being posted in three designated locations. Specifically, you state that agendas historically were posted at the post office, library, and bank, and now they are not. You further allege that the meeting minutes do not state the location of where the agendas are posted. We assume your complaint is referring to the posting of meeting “notices,” and not “agendas.” Neb. Rev. Stat. § 84-1411(1)(b)(ii) provides that “[i]n the case of the governing body of a city of the second class or village . . . such notice shall be published by: [p]ublication in a newspaper of general circulation within the public body’s jurisdiction and, if available, on such newspaper’s website; or [p]osting written notice in three conspicuous public places in such city or village. Such notice shall be posted in the same three places for each meeting.” In its response, the Board states that it publishes notices of its meetings along with the agenda in three places: (1) the post office at 120 N. Pine Street, (2) Jones Bank at 108 W. 2nd Street, and (3) the senior center at 312 Pine Street. The Board further states that it used to post notice at the library but now posts at the senior center instead. The Board is within its power to change the location of meeting notices. As such, the Board is complying with the meeting notice requirements of the Act. You also allege that the meeting minutes do not state the location of meeting notices. Neb. Rev. Stat. § 84-1411(1)(d) provides that “[e]ach public body shall record the methods and dates of such notice in its minutes.” A review of several meeting minutes from 2020 shows that the Board is not including meeting notice locations within its minutes. In its response, the Board has represented that going forward it will include the location of meeting notices in the minutes.

Specificity of Agendas

Your next allegation is that the Board is approving items that are not on the agenda. The essence of this allegation is that the agendas lacked sufficient detail to give the public notice of items to be discussed at the meeting. You list ten (10) instances where you believe items were not sufficiently detailed. You provided a copy of the agenda from the January 14, 2020, February 11, 2020, April 14, 2020, May 12, 2020, August 11, 2020, October 13, 2020, November 10, 2020, and December 8, 2020 meetings to support your claim. The following is a list of items you allege appeared in the minutes but not on the agenda: approval of a zoning request change; approval to

spend \$40,880 on a water tank; approval to spend \$4,000 on a town boundary map; approval to purchase a verbal frequency drive for \$13,000; approval to open ball fields; approval of a Class B liquor license; approval for Cleveland Circle paving plans; approval to spend \$5,000 on a bobcat; approval to spend \$2,500 on concrete drilling holes; and approval of a ten percent pay increase for a village employee. In its response, the Board stated most items complained of fell under the "Village Maintenance Supervisor Report" portion of the agendas. Neb. Rev. Stat. § 84-1411(1)(e) provides that "[a]genda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting." A review of all applicable agendas shows that the agendas were not sufficiently descriptive. As a general rule, a one-word item such as "Report" will likely be insufficient. We advised the Board to be more descriptive in its meeting agenda items. In its response, the Board represented that it will be more descriptive with the issues discussed and voted on by the Board.

Public Comment

Your complaint next alleges that the Board is not allowing public comment on agenda items. Under the item "Open Forum/Public Comment," the agendas state: "The Board welcomes your input. You may address the Board at this time on items that are not on tonight's agenda. According to the Nebraska Open Meetings Laws no action may be taken by the Board. The Village Board will review the matters as they deem appropriate." You have interpreted this statement to mean the public cannot address the Board on agenda items but only on matters not appearing on the agenda. In the Board's response, it states it does not interpret this statement to mean the public can comment only on non-agenda items. Further, the Board states the purpose is to inform the public they are able to talk about both agenda and non-agenda items. The Board is not aware of an instance where a member of the public was not allowed to speak on an agenda item. Despite this, the Board has represented that it is willing to clarify the language in the agenda to read:

The Board welcomes your input. You may address the Board at this time on items that are not on tonight's agenda. Pursuant to the Open Meetings Act the board is not allowed to vote on the matter during this meeting. Instead the Board will review the matter in order to determine whether it can be addressed administratively or should be placed on the next agenda for action by the Board. If your item relates to a matter that is on the agenda then please wait for that agenda item to be opened by the chair at which point the chairperson will ask for public comment.

Neb. Rev. Stat. § 84-1412(2) provides that a public body may make and enforce reasonable rules and regulations regarding the conduct of persons attending and speaking at its meetings. Accordingly, the Board did not violate the Open Meetings Act in regard to this portion of your complaint.

Board Communications

Your next allegation is that the Board is conducting public business in secret, via text messages between Board members. You also allege that during these text message conversations the Board determined how to vote on agenda items prior to meetings. However, there is no actual evidence to support these allegations, only speculation. Neb. Rev. Stat. § 84-1408 states “the formation of public policy is public business and may not be conducted in secret.” In its response, the Board states it believes the alleged conversations were regarding the library closure and were simply informational messages. The Board denies taking any formal action in these conversations. The Board has stated that in the future any informational updates will be directed to the Village Clerk who can then distribute information to the Board to prevent the appearance of Board communication outside of a meeting. There is no evidence the Board violated the Open Meetings Act in regard to this portion of your complaint.

Meeting Minutes

Your next complaint is that the Board held a special meeting on January 21, 2020, but did not produce minutes following the meeting. The February 11, 2020 meeting minutes, which was the first meeting following the special meeting, do not reflect that minutes were approved for the special meeting. Neb. Rev. Stat. § 84-1413(1) provides that “[e]ach public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.” A meeting under the Act includes all regular, special, or called meetings, formal or informal. Neb. Rev. Stat. § 84-1409(2). In its response, the Board acknowledges there may have been a couple instances where the Board met, took no formal action, and thus no meeting minutes were produced. Even if no formal action is taken at a meeting, minutes must still be produced since a meeting occurred. The Act does not make an exception for meetings where no formal action is taken. The Board has represented to us that in the future it will produce meeting minutes even for meetings where no formal action is taken.

Notice/Agenda for January 27, 2021 Meeting

Your next complaint is that the Board may not have provided proper notice and an agenda for the special meeting held on January 27, 2021. There is no evidence to support this allegation. Having no evidence to support this allegation, we cannot conclude the Board violated the Act regarding this portion of your complaint.

Closed Session

Your final complaint is that the Board took formal action in a closed session held on January 27, 2021. Formal action may only be taken in open session after a closed session has concluded. Neb. Rev. Stat. § 84-1410(2). However, there is no evidence

Kay Maresh
July 1, 2021
Page 5

this occurred, and the Board denies ever taking formal action during a closed session. As such, we cannot conclude the Board violated the Act regarding this portion of your complaint.

CONCLUSION

For the reasons stated above, we do not believe the Board has violated the Open Meetings Act as to the allegations regarding public comment, secret board communications, notice for a special meeting, and taking formal action in a closed session. While we have determined the Board has failed to follow the Act in three respects regarding agenda detail and meeting minutes, we consider these to be technical violations that do not rise to the level of criminal prosecution. Additionally, we find no civil action would be warranted under the circumstances. The attorney for the Board has represented to our office that he will ensure the Board complies with the Act regarding these matters in the future.

We are providing a copy of this disposition letter to counsel for the Board. At this time, we plan no further action and are closing our file. If you disagree with the analysis set forth above, you may wish to consult with your private attorney to see what other legal remedies may be available to you.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Laura A. Nigro
Assistant Attorney General

cc: Jovan W. Lausterer

35-213-29