



STATE OF NEBRASKA  
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September 7, 2021

Ms. Damara Woitalewicz



RE: *File No. 21-M-111; Village of Western; Damara Woitalewicz, Complainant*

Dear Ms. Woitalewicz:

This letter is in response to your complaint filed with our office on April 21, 2021, regarding certain actions of the Village Board of Trustees (the "Board") of the Village of Western, including the Board's April 5, 2021 meeting. We considered your complaint to be, at least in part, a complaint concerning the Nebraska Open Meetings Act (the "Act"), Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2020), amended 2021 Neb. Laws LB83, §§ 11-14. Please note that we have no general supervisory authority over local governmental entities in Nebraska, including villages, apart from our responsibility to enforce the Open Meetings Act and the Nebraska Public Records Statutes. In the present case, the enforcement authority of this office relates only to the Act and not to any other Board policies, local ordinances or other statutory provisions that may be implicated.

We followed our normal practice and sent your complaint to Mr. Frank Meyers, Chairman of the Board, on April 27, 2021, and requested a response. We received a response on May 20, 2021, which contained a copy of the Board's Notice of Meeting and Agenda for the April 5 Board meeting and a legal analysis from the Board's legal counsel, Benjamin H. Murray, on the issues raised in your complaint relating to the Act. We subsequently received a copy of the minutes of the April 5 meeting on June 1, 2021. We have now completed our review of your complaint, the relevant Board documents and the analysis provided to us by the Board. Our conclusion is set forth below.

## RELEVANT FACTS

From your complaint and the other materials we received, we note the following relevant facts apart from the conduct of the Board at the April 5 meeting. First, notice of the April 5 Board meeting was certified as having been posted in three public locations within the Village as of March 22, 2021. Second, the meeting agenda, noticed as available for inspection at the office of the Village Clerk, contained distinct agenda items for public comments (item 4) and village insurance (item 11) among twenty-three agenda items. Third, the minutes of the meeting were written and available for inspection at the office of the Village Clerk, but were not otherwise published as of the submission date of your complaint. From your complaint, we summarize your allegations potentially relevant to the Act as follows:

1. There did not appear to be a reference to the Act posted at the meeting site on April 5.
2. Although you acknowledge being allowed to make comments or ask questions of the Board during agenda item 4 (the public comment period) and agenda item 9, regarding a Village agreement with the City of Beatrice for garbage service, you were told by the Board Chair or Village Clerk that you were not allowed to speak on agenda item 11 regarding Village insurance contracts as you were not specifically listed on the agenda for item 11. You furthermore assert that other members of the public in attendance were allowed to speak or ask questions of the Board for nearly every other agenda item.
3. With regard to agenda item 18 pertaining to the Village library, you allege that a "mumbled conversation" (presumably inaudible) occurred between the Board chair and the Village Clerk.
4. "Anything that was voted on that night was voted as 'voice vote,' not as 'roll call vote.'"
5. The April 5 Board meeting minutes were not posted at the Village Post Office as is apparently customarily done and that meeting minutes were not otherwise published in any local newspapers.

## DISCUSSION

We address each of these allegations respectively in the order summarized above.

First, the Act requires public bodies such as village boards to make accessible to the public at each meeting at least one current copy of the Open Meetings Act and inform the public of the location of the posted information at the beginning of the meeting. See Neb. Rev. Stat. § 84-1412(8). Your complaint states that you "[d]id not see any reference

to the 'Open Meeting Act' posted" when you attended the April 5 meeting. We note that the "Open Meetings Laws" is listed on the agenda under item 3. The minutes provided to us state that "[t]he Open Meeting Laws are posted in the meeting room." Mr. Murray represents that when the chair reached item 3, "he informed the public that a copy of the Act was posted on the table at the front of the meeting room. This is the procedure followed at every meeting." As no further information was provided to suggest that these minutes are inaccurate, or that the chair failed to make the required announcement, we find no violation of section 84-1412(8).

Second, regarding the public's right to speak at meetings of public bodies, we first note that public bodies in Nebraska generally operate as a form of representative democracy. See *Distinctive Printing and Packaging Company v. Cox*, 232 Neb. 846, 443 N.W.2d 566 (1989); *State ex rel. Strange v. School District of Nebraska City*, 150 Neb. 109, 33 N.W.2d 358 (1948). Therefore, when members of the public attend meetings of public bodies in Nebraska, they most often attend as observers, not members of the body itself. It is within this context that this office has historically construed the provisions of the Act concerning the public's right to speak at meetings of public bodies. Section 84-1412 provides that, subject to the Act itself, the public has a right to attend and to speak at meetings of public bodies. The right of the public to attend and speak at meetings of public bodies, however, is not absolute. The Act provides that although public participation at all meetings may not be forbidden, no public body is required to allow citizens to speak at each meeting. Neb. Rev. Stat. §84-1412(2). Under this provision of the Act, a public body must set aside *some time* at *some* of its meetings for members of the public to address it. Accordingly, there is no absolute right for members of the public to address a public body at any given meeting or on any given agenda item, so long as there is some time at some meetings set aside for public comment. Public bodies can rightfully refuse, as the Board in this case appears to have done, to allow public comment at a given meeting, or as they consider a particular agenda item. Given that an opportunity for general public comment occurred during the meeting, it appears that the Board acted within the scope of its statutory authority to prohibit public comment on the particular agenda item alleged in your complaint.

Third, Neb. Rev. Stat. § 84-1412(7) requires that "[e]ach public body shall, *upon request*, make a reasonable effort to accommodate the public's right to hear the discussion and testimony presented at the meeting." (Emphasis added.) To the extent your reference to a "mumbled conversation" in your complaint alleges a violation of § 84-1412(7), we find no such violation. In this instance, there is no mention in either the minutes or your complaint of an attempt by any meeting attendee to request accommodation from the Board to ensure the public's right to hear the discussion in question.

Fourth, the Act requires "[a]ny action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the record shall state how each member voted or if the member was absent or not voting." Neb. Rev.

Stat. § 84-1413(2). The minutes of the April 5 Board meeting account for six motions being duly made and seconded with all members voting aye and two motions in which Trustee Woitalewicz voted “nay” with all other trustees voting “aye” respectively named. It is unclear from the minutes whether such votes were by roll call vote. It appears from the response received from the Board’s legal counsel that some or all of the Board’s votes during the April 5 meeting were not conducted by roll call vote. The Board’s legal counsel appears to assert that Board votes which are not conducted by roll call vote are not a violation of the Act and any failure to conduct roll call votes may not be raised after the relevant meeting if not objected to during the meeting citing, *Hauser v. Nebraska Police Stds. Adv. Council*, 264 Neb. 944, 653 N.W.2d 240 (2002). However, the Board counsel’s reliance on *Hauser* is misplaced as the Act otherwise specifically provides that “[i]t shall not be a defense that the citizen attended the meeting and failed to object at such time.” Neb. Rev. Stat. § 84-1414(3). The legislative history of this provision is clear that this language was inserted specifically in response to the *Hauser* decision. See Floor Debate on LB 898, 99<sup>th</sup> Leg., 2<sup>nd</sup> Sess. at 11696-11698 (March 28, 2006). Consequently, the Board should ensure that all future Board actions are conducted in accordance with § 84-1413(2).

Lastly, for purposes of compliance with the Act, Neb. Rev. Stat. § 84-1413 requires a public body such as a village board to keep minutes, that the minutes of a public body’s meeting are public records, and such minutes must be written and available for public inspection during normal business hours within ten working days or prior to the next convened meeting, whichever occurs earlier.<sup>1</sup> The Act does not otherwise specify any other location for posting village board meeting minutes or any other publication requirements. Based on Mr. Murray’s general assertion that “minutes are always written and available for inspection,” it appears that no violation of the Act’s provisions regarding meeting minutes occurred. We would note, however, and bring to the Board’s attention that Neb. Rev. Stat. § 19-1102 (Cum. Supp. 2020) requires a village clerk “to prepare and publish the official proceedings of the . . . village board of trustees. The publication shall be in a legal newspaper in or of general circulation in the city or village . . . .” This office lacks enforcement authority with regard to this statute as it is not a part of the Act; nevertheless, the Board must comply with the publication requirements in section 19-1102 for all future meeting minutes.

## CONCLUSION

In light of the discussion above, we will remind the Board, by sending a copy of this letter to its counsel, that all requirements of the Act, particularly those regarding voting, must be strictly complied with. Furthermore, although not a requirement of the Act, we strongly suggest the Board take care to adhere to the publication requirement in Neb. Rev. Stat. § 19-1102.

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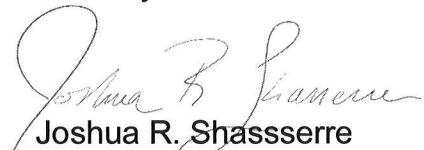
<sup>1</sup> In addition, village boards “may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.” Neb. Rev. Stat. § 84-1413(5).

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If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, may be available to you under the Act or any other provision of law.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Joshua R. Shassserre  
Assistant Attorney General

cc: Benjamin H. Murray

28-010-29