



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
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August 7, 2023

Via email at [REDACTED]
Bailea Caulfield

RE: *File No. 22-M-164; Keya Paha County Agricultural Society Board of Directors; Bailea Caulfield, Complainant*

Dear Ms. Caulfield:

This letter is in response to your complaint emailed to this office on November 3, 2022, in which you alleged violations of the Open Meetings Act ("Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2022), by the Keya Paha County Agricultural Society Board of Directors ("Board"). Upon receipt of your complaint,¹ we forwarded it to Keya Paha County Attorney Eric Scott and requested a response. We received Mr. Scott's response on December 15, 2022. We have now completed our review of your complaint and Mr. Scott's response. Our findings in this matter are set forth below.

RELEVANT INFORMATION

On October 4, 2022, you requested to be placed on the Board's November 1 meeting agenda. The Board secretary, Jeffrey Nelson, subsequently informed you that the November 1 meeting was the society's annual meeting and you were on the agenda. You state that Mr. Nelson further informed you that a directors' meeting would follow the annual meeting, but that you were on the agenda for the annual meeting. When you arrived at the annual meeting, you found that you were not on the agenda, but had been moved to the directors' meeting agenda instead. You allege that the agenda was altered hours before the meeting by the Board president and his daughter, who also serves on the Board.

¹ As we noted in our initial correspondence to you dated November 7, 2022, any allegations that did not involve the Act or the Nebraska Public Records Statutes were outside of our authority and would not be addressed.

Mr. Scott informs us that it is a longstanding practice for the society “to have a two part meeting at the annual meeting.” He states that the first part of the meeting are for elections as contemplated in Neb. Rev. Stat. § 2-253 (2022), and that at the November 1, 2022, annual meeting “[n]o other persons and no other business was discussed, other than elections” The second half of the meeting involves addressing other matters that come before the society. He states that, “[i]n essence there is one meeting.” Mr. Scott further represents that you spoke at both meetings, nominating a candidate at the annual meeting and discussing the society’s table and chair loaning policy at the second meeting. He states that at no time did you object during the meeting.² He further explains that “[t]his bifurcation of the meeting has been done with the intention of complying with Neb. Rev. Stat. 2-253 and allowing the . . . directors who have been elected by the voters of Keya Paha County an opportunity to vote on the matters.”

DISCUSSION

The Act contains several provisions pertaining to meeting agendas, most of which are set out in § 84-1411(1)(e):

Such 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. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. Except for items of an emergency nature, the agenda shall not be altered later than (i) twenty-four hours before the scheduled commencement of the meeting or (ii) forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

We have reviewed the original and “altered” agendas for each meeting held on November 1, which you provided with your complaint. Your name appears on the original agenda for the annual meeting under “New Business,” but does not appear on the original directors’ meeting agenda. With respect to the “altered” agendas, this scenario is reversed, with your name removed from the annual meeting agenda but appearing on the directors’ meeting agenda at item 6.c.

You have alleged that the Board violated the Act by altering the agendas a few hours before the meeting. Mr. Scott asserts that the annual meeting and the directors’ meetings are “in essence . . . one meeting.” We disagree. As noted above, the annual meeting is specifically authorized under § 2-253, which provides in part that

² Any requirement to object to a violation of the Act during an open meeting, or waive your right to do so, was legislatively superseded with the enactment of 2006 Neb. Laws LB 898, § 4, codified at § 84-1414(3) (“It shall not be a defense that the citizen attended the meeting and failed to object at such time.”).

a county agricultural society shall hold an annual meeting open to all registered voters of the county for the purpose of electing a board of directors and conducting any other business of the county agricultural society. Only registered voters of the county are eligible to participate and vote at the annual meeting of the county agricultural society. The board of directors of the county agricultural society shall give notice of the annual meeting in a newspaper of general circulation within the county once at least five days before the scheduled annual meeting. The notice shall state the time and place of the annual meeting and that all registered voters of the county are eligible to participate and vote at the annual meeting. The vote for any election held in connection with the county agricultural society shall be cast personally and not by proxy vote. At the annual meeting of the county agricultural society, all questions upon motions made at the annual meeting shall be determined by a majority of the registered voters voting and the presiding officer shall ascertain and declare the result of the votes upon each question.

A county agricultural society's annual meeting is not the same as a meeting under the Act. Section 2-253 expressly provides the purpose of the meeting, who may participate and vote, and the time and manner of notice. Unlike an open meeting where only the public body³ is authorized to discuss public business and take formal action, the registered voters assembled at the society's annual meeting constitute the voting, governing body.

Moreover, according to the meeting agendas, each meeting was separately called to order and separately adjourned.⁴ As a result, we are not persuaded that only one meeting occurred on November 1. Since your name was removed from the annual meeting agenda and placed on the directors' meeting agenda within the twenty-four hours prior to the commencement of the meetings, we find that Board members violated § 84-1411(1)(e).

In light of this finding, we must also determine what enforcement action by this office, if any, is appropriate under the circumstances of this case. We do not believe that civil or criminal action is appropriate in this situation, especially since you were placed on the directors' meeting agenda and allowed to speak at this meeting.⁵ (And according to Mr. Scott, you also spoke at the annual meeting.) However, we will remind Board members, by sending a copy of this letter to Mr. Scott, that a meeting agenda cannot be

³ See Neb. Rev. Stat. § 84-1409(1).

⁴ See our disposition letter in *File No. 23-M-109; Papillion La Vista Community Schools Board of Education; Loreen Reynante, Complainant*, dated July 31, 2023, where we considered whether a hearing and subsequent meeting by the school board constituted one meeting for purposes of compliance with rules regarding public comment, accessible at <https://ago.nebraska.gov/disposition-letters>.

⁵ Also keep in mind that you have no individual right under the Act to be placed on any agenda of a public body.

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altered within the twenty-four period before the commencement of the meeting except for items of an emergency nature.

Since we have determined that no further action by this office is appropriate at this time, 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 Act.

Sincerely,

MIKE HILGERS
Attorney General



Leslie Donley
Assistant Attorney General

c: Eric Scott

49-3293-30