



STATE OF NEBRASKA  
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August 3, 2023

Via email at [REDACTED]  
Wendy McKain

RE: *File No. 23-M-103; Village of Trenton Board of Trustees; Wendy McKain  
Complainant*

Dear Ms. McKain:

This letter is in response to your complaints submitted on January 23 and 27. This letter will address your allegations of violations of the Nebraska Open Meetings Act (“Act”), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2022) and the Nebraska Public Records Statutes (“NPRS”), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2022), by the Village of Trenton 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 for a response. On February 23, we received responses from Attorney Jon Schroeder on behalf of the Board. We have now completed our review of your complaint, and our findings and conclusions are set out below.

Before we begin, we would like to point out that Neb. Rev. Stat. § 84-1414(2) gives this office general enforcement authority over the Act. This authority requires us to determine whether a public body has complied with the various procedural provisions of the Act relating to notice, agenda, closed session, voting, minutes, etc. However, our authority does not extend to scrutinizing decisions made by a public body in the course of a public meeting. These are matters inherent to a public body’s *governance*, over which we have no authority or jurisdiction. As a result, we cannot determine the legality or appropriateness of a decision, act, motion, etc. made by a public body which does not implicate a provision of the Act. Thus, your allegations relating to the requirement that ordinances be read on three different days pursuant to Neb. Rev. Stat. § 17-614(b), the way items removed from the agenda are described in the minutes, and whether claims are sufficiently described in the “check approval list” considered during a meeting, will not be addressed in this letter.

## ALLEGED VIOLATIONS

Upon review of your complaints, we have identified six alleged violations of the Open Meetings Act:

1. The December 6, 2022 meeting minutes erroneously imply that “McKain resigned” and the Board failed to correct this error despite complainant’s request.
2. After the December 6, 2022 meeting, a quorum of Board members continued to discuss public business after the meeting had adjourned.
3. The agenda for the December 27 special meeting was posted on December 25, a Sunday.
4. During the January 10 meeting, the Board gave the incorrect reason for entering closed session.
5. At the January 25 meeting, the Board voted to complete forms for the Nebraska Department of Transportation, but the item was not sufficiently described in the agenda.
6. The Village of Trenton El Dorado Board and Village of Trenton Library Board do not comply with the Act.

We have also identified one complaint alleging a violation of the NPRS:

1. On December 28, complainant requested a copy of the revised meeting minutes for the December 6 meeting and received no response.

## DISCUSSION

### A. *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). “The purpose of the open meeting law is to insure that public policy is formulated at open meetings of the bodies to which the law is applicable.” *Pokorny v. City of Schuyler*, 202 Neb. 334, 339, 275 N.W.2d 281, 284 (1979). The open meetings laws should be broadly interpreted and liberally construed to obtain their objective of openness in favor of the public. *State ex rel. Upper Republican NRD v. District Judges*, 273 Neb. 148, 728 N.W.2d 275 (2007).

Both the Attorney General and the county attorney of the county in which the public body ordinarily meets have the authority to enforce the Act. Neb. Rev. Stat. § 84-1414(2). However, only the district court can declare the act of a public body void. Neb. Rev. Stat. § 84-1414(1).

### 1. December 6 Meeting Minutes

You first allege that the Board violated the Act by failing to revise the minutes of the December 6 meeting to make it clear that you did not resign your position as village clerk. A public body has no legal obligation to revise meeting minutes at the request of a member of the public. The Act requires only that meeting minutes accurately reflect “the substance of all matters discussed.” Neb. Rev. Stat. § 84-1413(1). The December 6 minutes establish that you were removed from your position as clerk by a vote of the Board. The minutes record two votes relating to the position of village clerk. The Board first voted against retaining you as village clerk and then voted in favor of hiring a new clerk. You have not alleged that the minutes inaccurately reflect those votes.

Following the record of those two votes, the minutes include a statement that “McKain told the board at this time she was done working for them.” You suggest that this statement incorrectly implies that you resigned from your position. Whether or not you made that statement verbatim, the Board has advised us that, instead of continuing your employment until a new clerk could be hired, you ceased working immediately following the vote. For this reason, we cannot conclude that the meeting minutes are an inaccurate reflection of the substance of what was discussed at the December 6 meeting, and do not find that the Board’s failure to revise the minutes as requested violated the Act.

### 2. Conversations After the December 6 Meeting

You allege that a quorum of Board members continued to discuss village business after the December 6 meeting adjourned. You were not present during this discussion and have not provided any specifics relating to what topics were allegedly discussed. Mr. Schroeder, responding for the Board, states that he was advised by the three Board members that they did not discuss village business after the meeting while they put away tables and chairs. The Act applies only to meetings of public bodies. Section 84-1409(2) defines meeting as “all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.” However, there is no meeting, even though a quorum is present, when there is no discussion of public policy.<sup>1</sup> Without evidence to the contrary, we cannot find that a quorum of Board members discussed public policy outside of an open meeting. For this reason, we find no violation of the Act related to these allegations.

### 3. Agenda for the December 27 Special Meeting

You allege that the Board violated the Act by finalizing the agenda for the December 27 special meeting on a day when the village office was closed. Specifically,

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<sup>1</sup> *Schauer v. Grooms*, 280 Neb. 426, 447, 786 N.W.2d 909, 926 (2010).

you assert that a meeting notice for the Tuesday December 27 special meeting was “discovered on Friday, 12/23/2022, at which time the agenda was not available as the office was closed.” In addition, you allege that the “availability of the agenda was not ‘released’ on the website until 12/25/2022 at 5:33 pm.” You believe this was a problem especially because the office was scheduled to reopen after the holiday on December 27 at 8:00 a.m. and the special meeting was scheduled to begin at 9:00 a.m. that same day.

The Act requires only that 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.” Neb. Rev. Stat. § 84-1411(1)(e). It is unclear whether the agenda was available for review at the principal office when the notice was posted. The Act prohibits changes to the agenda, except for items of an emergency nature, later than twenty-four hours before the meeting is scheduled to begin. However, there is no requirement that the twenty-four-hour period begin during business hours. Neb. Rev. Stat. § 84-1411(1)(e). While larger municipalities are required to post agendas on their websites, there is no such requirement for villages. Neb. Rev. Stat. § 84-1413(6). Though it was not required to do so, the Board made the agenda publicly available by posting the agenda for the December 27 special meeting on its website on December 25, more than twenty-four hours before the meeting. Under the circumstances, we find no action is required based on these allegations.

#### 4. Closed Session During the January 10 Meeting

You allege that the “board violated the Open meetings Act [by] going into a closed session to ‘discuss the passwords’” at its January 10 meeting. You assert that prior to entering the closed session the “village attorney made the statement ‘and that would be for the . . . potential [sic] of public interest, prevention of the needless injury of a reputation of an individual.’” In his response, Mr. Schroeder explains that someone had changed multiple passwords used by the village and that the Board went into executive session “to discuss the investigation and the forensic audit of the computer system relating to the passwords.” The meeting minutes record the votes to enter and exit the closed session as well as the times those votes were taken but do not identify the reason for the closed session.

The Act permits a public body to hold a closed session if it is “clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual.” Neb. Rev. Stat. § 84-1410(1). During the meeting, Mr. Schroeder cited both general reasons for the closed session. Without evidence to the contrary, we can reasonably infer that a closed session was necessary for the protection of the public interest, in this case to protect the integrity of the investigation and to keep the details of the village’s computer security systems confidential. For this reason, we do not find that the closed session was improper. However, we note that the Act requires that the reason for the closed session be identified in the motion to enter closed session

and that the motion, including the reason, be reported in the minutes. Neb. Rev. Stat. § 84-1410(2). We remind the Board, through a copy of this letter, of its obligation to strictly adhere to this requirement.

5. Agenda for the January 25 Special Meeting

You allege that the agenda for the January 25 special meeting did not adequately describe the agenda item relating to the Nebraska Department of Transportation. The agenda listed “Discuss and \ approve the Nebraska Department of Transportation. [sic] forms” as an item of new business. You allege that the actual item was a “Resolution for Hwy. Allocation.” The Act requires that agenda items “be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting.” Neb. Rev. Stat. § 84-1411(1)(e). The minutes show that the Board approved a motion to sign and adopt the Nebraska Department of Transportation’s form, which we understand is entitled “Year-End Certification of City Street Superintendent.” In any event, we do not find that the description was so vague as to deprive members of the public of reasonable notice of the matter to be discussed.

6. The Village of Trenton El Dorado Board and Village of Trenton Library Board

You allege that the Village of Trenton El Dorado Board (“El Dorado Board”) and the Village of Trenton Library Board (“Library Board”) are not in compliance with the Act. You do not provide evidence to support your contention. However, in his response, Mr. Schroeder asserts that neither of these boards are subject to the Act because they are subcommittees of the Village Board. Because we have no evidence that would allow us to determine whether either of these boards are in compliance with the Act, we address only Mr. Schroeder’s contention that the boards are not subject to the Act.

The Act applies to all public bodies in Nebraska. The definition of public body includes “all independent boards, commissions, bureaus, committees, councils, subunits, or any other bodies created by the Constitution of Nebraska, statute, or otherwise pursuant to law.” Neb. Rev. Stat. § 84-1409(1)(a). Both the El Dorado Board and the Library Board are public bodies because they were created by village ordinance. As Mr. Schroeder points out, subcommittees are generally not subject to the Act. A subcommittee “is generally defined as a group within a committee to which the committee may refer business.”<sup>2</sup> The El Dorado and Library Boards are not subgroups within the Village Board. The El Dorado and Library Boards are not made up of Village Board members, but instead consist of community members appointed by the Village Board pursuant to village ordinance. For this reason, both the El Dorado Board and the Library Board are public bodies subject to the Act. Accordingly, immediate action should be taken to bring both boards into compliance with the Act.

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<sup>2</sup> *City of Elkhorn v. City of Omaha*, 272 Neb. 867, 880-881, 725 N.W.2d 792, 805 (2007).

**B. NPRS**

You allege that the Board violated the NPRS by failing to respond to your records request. You explain that you asked the Board to revise the minutes for the December 6 special meeting. You contend that "I completed a records request form on 12/28/2022 for an official copy of the revised minutes, as of today (01/19/2023) a copy still has not been received." You have not provided a copy of your records request, or any response you may have received from the Board.

From a review of the minutes posted on the Board's website, it does not appear that the December 6 minutes were ever revised. As discussed above, the Board was under no legal obligation to revise the minutes at your request. Because the record you requested did not exist, the custodian of records was under no obligation to produce any document.

**CONCLUSION**

For the reasons stated above, we are unable to conclude that the Board's actions violated the Act or NPRS. We will notify the village attorney, through a copy of this letter, that both the Library Board and the El Dorado Board are subject to the Act. If those boards are not currently in compliance, immediate action should be taken to bring them into compliance with the Act. Since no further action by this office is required, we are closing this file. If you disagree with our analysis you may wish to discuss this matter with a private attorney to determine what additional remedies, if any, are available under the Open Meetings Act or the NPRS.

Sincerely,

MIKE HILGERS  
Attorney General



Elizabeth O. Gau  
Assistant Attorney General

c: John S. Schroeder  
03-072-30