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June 20, 2014

C.L. San-D Nolte
312 Main Street
Hamlet, NE 69040

RE: *File No. 13-M-129; Village of Hamlet Board of Trustees; C.L. San-D Nolte, Complainant*

Dear Ms. Nolte:

This disposition letter is written in response to your complaint received by us on October 8, 2013, in which you allege violations of the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2008, Cum. Supp. 2012, Supp. 2013) (the "Act"), by the Village of Hamlet Board of Trustees ("Board"). As is our normal practice with complaints alleging violations of the Act, we contacted the public body involved and requested a response. In this case, we forwarded your complaint to Board chairperson Forrest Matti. On October 24, 2013, we received Mr. Matti's response. We have now had an opportunity to consider your complaint and the Board's response in detail. Our conclusion and future action in this matter are set forth below.

Before we begin, we would like to briefly discuss our enforcement authority under Neb. Rev. Stat. § 84-1414 of the Open Meetings Act. This statute gives this office the authority to determine whether a public body has complied with the various procedural provisions of the Act relating to agenda, notice, closed session, voting, minutes, etc. However, while this office does have enforcement authority under the Open Meetings Act, we have no general supervisory authority over local political subdivisions, including villages. Consequently, we cannot address any matter set out in your complaint that does not involve the Open Meetings Act, e.g., the former chairman's resignation, filling the clerk/treasurer position, allegations about you embezzling village funds, the FEMA/NEMA deposit, etc.

OPEN MEETING ALLEGATIONS RAISED IN YOUR COMPLAINT

Based upon our review of your complaint, we have identified two open meeting allegations against the Board. Specifically, you have alleged that the Board does not

allow members of the public to speak, unless (1) they are specifically asked a question by a member of the Board and need to respond or (2) the Board decides to recognize an individual to speak after that individual has filled out a card with his or her name and subject matter, and places it on the table where the Board sits.

You have also alleged that the "Board spends money without discussion, bid letting or vote." However, you have not provided us any specific facts as to when the Board may have violated the Act in this regard. We do not consider broad, sweeping allegations of wrongdoing by public bodies in the absence of any credible evidence to support such claims. As a result, we will not address it.

THE BOARD'S RESPONSE

With respect to your allegation that visitors are not allowed to speak at Board meetings, Mr. Matti states:

> All visitors are also granted a three minute window of speech not stated by Mrs. Nolte.
>
> The rules for visitors are that they must remain silent during the meeting unless
>
> A. They are called upon by a board member to render testimony to a subject currently being discussed
>
> B. The meeting is declared open to visitor speaking where any and all visitors are granted a three minute window of speech (every meeting has been open to that opportunity and two visitors have availed themselves of that time)
>
> C. Note cards are also furnished and any visitor may sign his name and subject matter to one and place it on the board table anytime during the meeting and it will be addressed in some manner. (one visitor has done so with excellent results)

Mr. Matti states that these rules were implemented at the suggestion of an attorney to resolve the "mess" at previous meetings relating to "name calling, accusations, and anger." He states that meetings stick to the published agenda, and are considerably shorter in that he does not allow you and others to interrupt. Mr. Matti reiterates that there is a three-minute window in which to speak if members of the public so choose.

DISCUSSION

Neb. Rev. Stat. § 84-1408 (2008) of the Nebraska 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 primary purpose of the public meetings law is to ensure that public policy is formulated at open meetings. *Marks v. Judicial Nominating Comm.*, 236 Neb. 429, 461 N.W.2d 551 (1990). The Nebraska public meetings laws are a statutory commitment to openness in government. *Wasikowski v. The 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).

Neb. Rev. Stat. § 84-1412 of the Open Meetings Act contains several provisions which deal with the public's right to speak at open meetings of public bodies, including the following:

> (1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies . . . .
>
> (2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, [or] speaking at . . . its meetings. *A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.*
>
> (3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body may require any member of the public desiring to address the body to identify himself or herself.

(Emphasis added.)

Based upon § 84-1412 and other applicable authorities, we have developed a number of rules which, in our view, govern the public's right to speak at open meetings of public bodies, including the following:

1. 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). That is, Nebraska citizens elect individuals to represent them on various boards, commissions, etc., rather than having all who are present at a particular meeting of a public body act as members of that body. 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,* and they have no right, apart from periods set aside for public comment, to engage in the body's debate, to question members of the body, to comment on particular decisions, or to vote on the issues at hand. Those latter rights go to the members of the public body, who ran for and were elected to office. While any particular public body may certainly choose to allow citizens to participate in its meetings, citizens attending a meeting of a particular public body are not members of that body.

2. Under the portion of § 84-1412(2) emphasized above, 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 to allow public comment at a given meeting, or as they consider a particular agenda item.

3. Public bodies have the right to make *reasonable* rules for those members of the public who choose to address them. That includes reasonable limits on the use of time.

4. Public bodies may not require that the name of any member of the public be placed on the agenda prior to a meeting in order for that person to speak about items on the agenda at that meeting.

5. Public bodies should probably set aside some time at some of their meetings for members of the public to address them on any topic whatsoever, so long as those comments are not obscene or threatening in any way.

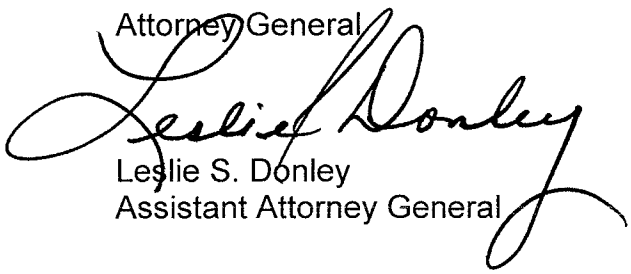
6. Members of the public may not be required to identify themselves to gain entry to a meeting of a public body. However, they may be asked to identify themselves if they wish to speak to the public body.

We have reviewed the Board's procedures for public comment in light of the rules set out above, and it does not appear that they violate the Act. According to the Board chairman, all visitors are given an opportunity to address the Board at every meeting. The Board has set a three-minute time limit, which we believe is a reasonable amount of time in which to address the Board. Except for the three-minute public comment periods, visitors are only allowed to speak when testimony is elicited on a subject being discussed, or if the Board recognizes an individual who has indicated his or her desire to speak during the meeting by placing a notecard at the Board table. We believe that this too is reasonable. On the other hand, the "notecard" procedure alone, where Board members could arbitrarily pick and choose who gets to speak at a Board meeting, to the exclusion of others, has the potential for violation of the Act. In this regard, so long as the Board continues to set aside *some time* at *some* of its meetings for members of the public to address it, we believe it meets the requirements of the Open Meetings Act with respect to public comment. Keep in mind that public meetings are not meant to provide public dialogues between the individuals who serve on these boards and members of the public. (See Rule No. 1, p. 4.)

Since we do not believe that the matters discussed in your letter involve a violation of the Act, we are closing this file, and we plan no further action with respect to your complaint. If you disagree with our conclusions, you may wish to discuss this matter with your private attorney to determine what additional remedies, if any, are available to you under the Open Meetings Act.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Forrest Matti

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