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June 20, 2014

Todd Heyen
1502 364th Rd.
Seward, NE 68434

RE: *File No. 13-M-113; Village of Utica Board of Trustees; Todd Heyen, Complainant*

Dear Mr. Heyen:

This disposition letter is in response to your two complaints received by us on May 3, and May 22, 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 Utica 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 complaints to Board chairperson Don Olson. On June 17 and June 26, 2013, we received responses from attorney Michael G. Mullally, who responded on behalf of the Board. We have now had an opportunity to consider your complaints and the Board's responses in detail. Our conclusion and future action in this matter are set forth below.

FACTS

Our understanding of the facts in this matter is based on your complaints and the information contained in the Board's responses.

Your first complaint, dated May 1, 2013, relates to the agenda for a special meeting held on April 10, 2013. Specifically, you allege that the Board's agenda was different from the agenda distributed to members of the public. According to the documentation you provided, the "Board's agenda" included the item—"Consider special designated license for American Legion Post #49." You assert that the public should not be surprised with conflicting information.

Your second complaint, dated May 21, 2013, reads in its entirety:

> The Village of Utica had an economic meeting of some sort on 5/20/13 and once again four members of the board where [*sic*] there and it was NOT posted for the public. I would like to know how this can continue to happen? Are there or are there not rules governing this?? (Emphasis in original.)

According to the Board, the village clerk prepared an initial agenda for the April 10, 2013, special meeting, and this agenda was placed in informational packets prepared for the public. Three days after the initial agenda was prepared, the local American Legion Post requested an agenda item to discuss an application for a special designated liquor license. The clerk added this item to the agenda, which was subsequently posted in the normal three locations within the village, and on the village's website. The revised agenda was placed in the trustees' meeting packets, but was not replaced in the packets prepared for members of the public. The Board represents that this was just an oversight, and that the revised agenda was the one physically posted, posted online, and posted at the meeting location.

With respect to your second complaint, the Board states that the meeting at issue was an educational meeting focused on rural development issues. It was facilitated by the Seward County Economic Development Corporation and the Lincoln Area Development Partnership. Jonathan Jank, executive director of the corporation, e-mailed invitations to local area business men and government leaders, encouraging their attendance. The meeting was open to the public.

In this regard, Mr. Mullally asserts:

> Given the nature of this meeting, which was clearly an educational workshop event, the provisions of R.R.S. 84-1410(5) would appear to apply. The event was not called or otherwise organized by the village board, and no meeting was intentionally convened nor votes taken by board members. Attendance at the meeting by members of the village board at such an event and under these circumstances do not, in my estimation, give rise to a violation of open meeting laws.

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. § 84-1411 of the Act requires that public bodies provide "reasonable advance publicized notice" of its meetings "by a method designated by each public body and recorded in its minutes." With respect to agendas, the statute further requires:

> 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. . . .

Consequently, a public body must decide whether to include an agenda along with its publicized notice, or maintain a current agenda at its main office, and make it available for public inspection. Here, it appears that the Board has opted to maintain its agenda at the village clerk's office. As such, we consider this agenda to be the official agenda for the Board.

The Board has represented to us that due to an oversight, the official agenda did not get placed in the packets prepared for members of the public. However, the official agenda was physically posted within the village, posted online, and posted at the meeting location. In this regard, it appears to us that the statutory requirements relating to agenda and notice to the public were met. And while not having the current agenda in the public packets is troublesome, we do not believe it constitutes a violation of the Open Meetings Act under these circumstances.

With respect to your second complaint, over time, this office has consistently taken the position that two things must occur for a public body to hold a "meeting" subject to the requirements of the Open Meetings Act. First, a quorum of a public body must be present. Second, the public body must engage in some of the activities set out in the definition of "meeting" in Neb. Rev. Stat. § 84-1409(2) (Cum. Supp. 2012)—"briefing, discussion of public business, formation of tentative policy, or the taking of any

action of the public body." In our view, absent either of those elements, no "meeting" of a public body has occurred under the Act. In the present instance, there is no evidence that the Board members were doing any of the four activities that constitute a meeting under § 84-1409(2) when they attended the May 20, 2013, educational meeting.

Moreover, as the Board correctly points out, the Open Meetings Act

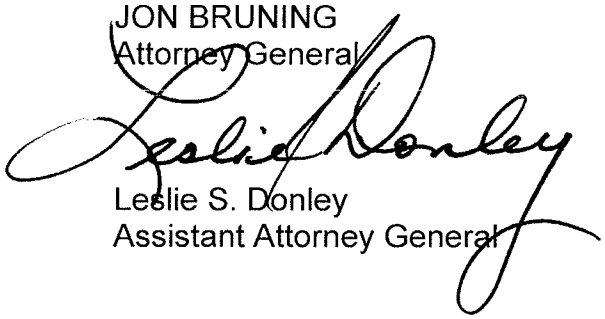
> does not apply to chance meetings or to attendance at or travel to conventions or workshops of members of a public body at which there is no meeting of the body then intentionally convened, if there is no vote or other action taken regarding any matter over which the public body has supervision, control, jurisdiction, or advisory power.

Neb. Rev. Stat. § 84-1410(5) (Cum. Supp. 2012). Based on information we received from Mr. Mullally, the May 20, 2013, meeting appears to fall squarely within the provisions of § 84-1410(5). The meeting was an educational workshop where no meeting of the body was intentionally convened. And you have offered no evidence to indicate that a vote or any other action was taken by Board members on matters over which they have "supervision, control, jurisdiction, or advisory power." As a result, we believe the May 20, 2013, meeting was not subject to the Open Meetings Act, and that the Board members' attendance at this meeting in no way constituted a violation of the Act.

Since no further action by this office is necessary, we are closing this file. However, you may wish to discuss this matter with your private attorney to determine what remedies, if any, may be available to you under the Open Meetings Act.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Michael G. Mullally

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