



STATE OF NEBRASKA
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February 10, 2021

Sandra Koll
[REDACTED]

RE: *File No. 20-M-103; Saline County Planning and Zoning Administrator;
Sandra Koll, Complainant*

Dear Ms. Koll:

In emails sent to our office on January 20 and February 21, 2020, you wrote to us concerning alleged violations of the Open Meetings Act ("Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2020), by Lyle Weber, administrator for the Saline County Planning and Zoning Board ("Board"). In accordance with our normal policy regarding such complaints, we forwarded your emails to the Saline County Attorney, Tad Eickman, and requested a response. According to Mr. Eickman, he referred the matter to Mr. Weber, who was to prepare the requested response. We received no written response from Mr. Weber nor did Mr. Weber make any attempt to contact the undersigned with respect to your complaint.

Upon completion of the process described above, we reviewed your complaint to determine if the situation warranted immediate action by this office for knowing violations of the Open Meetings Act. We determined that it did not. We have now had an opportunity to prepare an analysis of your complaint, and our comments are set out below. For the reasons discussed, we do not believe that this situation warrants any further action by this office at this time, and we are closing this file. However, we will caution Mr. Weber and the Board with respect to several aspects of your complaint.

YOUR COMPLAINT

The allegations set out in your two emails are summarized below:

1. Mr. Weber violated Neb. Rev. Stat. § 84-1413 by not having the November 19, 2019 meeting minutes available within ten days, i.e., the minutes were still unavailable two months following the meeting.

2. Mr. Weber violated Neb. Rev. Stat. § 84-1411(1) by not posting notice of the January 22, 2020, meeting in the Crete News on January 8th or 15th.

3. Mr. Weber is in violation of § 84-1411(1) by not consistently having an agenda available prior to the scheduled meeting.

4. Mr. Weber is in violation of § 84-1413 because the meeting minutes are “not available online in a clean organized manner.”

5. Mr. Weber posted two agendas prior to the February 21, 2020, meeting, using “two links for the same date.” The agenda provided at the meeting differed from the posted agenda.

We have construed the allegations against Mr. Weber to be allegations against the members of the Planning and Zoning Board, since only members of the public body are subject to the Act.¹ With that context in mind, we have addressed each of your allegations below.

DISCUSSION

1. Availability of Meeting Minutes

Neb. Rev. Stat. § 84-1413(5) (Cum. Supp. 2020), requires, with some exceptions not applicable here, that “[m]inutes shall be written . . . and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier” Applying this requirement in the present case, minutes for the November 19, 2019, meeting should have been available no later than December 5, 2019, taking into consideration the Thanksgiving holiday. Failure to have the minutes available on that date constitutes a violation of the Act.

2. Publication of Meeting Notice in Newspaper

As it existed in January 2020,² Neb. Rev. Stat. § 84-1411(1) required public bodies in Nebraska to provide “reasonable advance publicized notice” of their meetings “by a method designated by each public body and recorded in its minutes.” According to the

¹ See Neb. Rev. Stat. § 84-1414(4) (2014): “Any member of a public body who knowingly violates or conspires to violate or who attends or remains at a meeting knowing that the public body is in violation of any provision of the Open Meetings Act shall be guilty of a Class IV misdemeanor for a first offense and a Class III misdemeanor for a second or subsequent offense.”

² Neb. Rev. Stat. § 84-1411 was amended during the 2020 legislative session to place restrictions on certain public bodies regarding publication of meeting notices. 2020 Neb. Laws LB 148, § 3. However, the Planning and Zoning Board may continue to provide notice of their meetings “by a method designated by the public body.” Neb. Rev. Stat. § 84-1411(1)(b)(iii) (Cum. Supp. 2020).

Board's website,³ "the Board meets the third Tuesday of every month at 7:00 p.m. in the Court House Assembly Room." However, the Board is still required to provide notice by its designated method, which we assume is by publication in the Crete News. Failure to provide notice of its January meeting by the method designated by the Board would constitute a violation of the Act. However, since it is not entirely clear that the Board's method of publication is publishing notice in the Crete News, we are unable to conclude a violation occurred under these circumstances.

3. Availability of Agenda

Neb. Rev. Stat. § 84-1411(1)(e) requires that each meeting 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 The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.

The statute gives a public body the option to (1) publish the agenda in its notice, or (2) keep a current copy of the agenda in its office available for public inspection. Option (2) does not excuse the public body from having a draft agenda available at the time the meeting notice is published. An agenda available only two days prior to a scheduled meeting as alleged would not comply with the statute.

4. Online Posting of Meeting Minutes

As noted above, minutes must be written and available for inspection within ten business days of the public meeting. There is no provision in Neb. Rev. Stat. § 84-1413 that requires minutes to be posted online. Consequently, failure to place meeting materials online in an organized manner does not constitute a violation of the Act.⁴

³ See <https://co.saline.ne.us/webpages/zoning/zoning.html>.

⁴ However, we agree that there is a serious issue regarding the organization of the Board's online public meetings content. In this regard, the undersigned reviewed the Board's webpage for meeting minutes at https://co.saline.ne.us/zoning_meetings/minutes.aspx on February 8, 2021. Not one of the five links on the page accessed the minutes identified in the title of the link. For example, the link for the September 26, 2020, minutes, pulled up the September 15, 2020, minutes. The link for the January 20, 2021, minutes pulled up the November 17, 2020, minutes. A link titled "February 16, 2021" accessed the December 15, 2020, minutes.

5. Various Agendas Prepared Prior to Meeting

According to the documentation provided, Mr. Weber prepared at least three versions of the February 19, 2020, agenda, i.e., two agendas that were posted online, and an agenda that was distributed at the meeting. We assume the two links for the same meeting were for the two different agendas.

As set out in No. 3 above, § 84-1411 allows a public body to alter its agenda up to twenty-four hours prior to the commencement of the public meeting. An exception applies “for items of an emergency nature.” The statute further requires that the public body keep the agenda “continually current” and “readily available for public inspection” at its principal office during normal business hours. There are currently no provisions that require the public body to post its agendas on its website. And you have not specifically alleged that the agenda was altered within the twenty-four hours before the meeting on February 19, 2020. Thus, no violation of the Act occurred under the circumstances presented.

However, our review of the agenda for the February 19, 2020, meeting raises serious questions as to whether certain agenda items were “sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting.” The Legislature added this language to § 84-1411 in 2006⁵ after the Legislature’s Government, Military and Veterans Affairs Committee heard testimony during an interim study and committee hearings indicating that agendas for some public bodies in Nebraska were so cloudy or nondescriptive that ordinary persons did not have a clue as to what was on the agenda. Floor Debate on LB 898, 99th Neb. Leg., 2nd Sess. 11699 (March 28, 2006) (Statement of Sen. Schimek). As a result of such nondescriptive agendas, important agenda items had come up before public bodies which didn’t receive any public scrutiny because members of the public did not know about them. *Id.*

Here, the February 19, 2020, agenda includes the items “Old Business: Zoning Regulation changes” and “New Business: Open discussion.” These items are insufficient to give members of the public adequate notice of the matters to be discussed at the meeting. As a result, the Board’s agenda for this particular meeting violated the Open Meetings Act.

CONCLUSION

Based on the foregoing, the Board violated the Act with respect to the availability of meeting minutes and nondescriptive agenda items. There is insufficient evidence to determine whether the Board failed to publish notice of its January 22, 2020, meeting or improperly amended the February 19, 2020, agenda. While we contemplate no further action regarding this complaint, we will admonish the Board, through a copy of this letter to Mr. Weber and Mr. Eickman, that strict compliance with the Open Meetings Act in the

⁵ 2006 Neb. Laws LB 898, § 2.

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future is *imperative*. This directive not only relates to the availability of minutes and sufficiency of agenda items, but to all aspects of the Act, including proper notice. Finally, in light of the discussion above, it will be much harder for members of the Board to argue that they did not “knowingly” violate the Open Meetings Act should similar violations occur.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Tad Eickman
Lyle Weber

49-2639-29