



STATE OF NEBRASKA
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October 25, 2021

Via email at [REDACTED]
Eric Brown
[REDACTED]

RE: *File No. 21-M-110; Raymond Rural Fire District, Board of Directors, Eric Brown; Complainant*

Dear Mr. Brown:

This letter is in response to your correspondence in which you requested that this office address alleged violations by the Board of Directors of the Raymond Rural Fire Protection District ("Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2020) ("Act"). In accordance with our normal procedures, we requested a response from the Board after we received your complaint and we subsequently received a response from the Board's attorney, James Egr. We have now had an opportunity to review your allegations and the Board's response, and our conclusions are set out below.

ALLEGED VIOLATIONS

Upon review of your complaint, we have identified three alleged violations of the Open Meetings Act, as follows:

1. The Board did not post a copy of the Open Meetings Act at its September 15, 2020, January 18, 2021, and February 22, 2021 meetings;
2. The meeting agenda for the September 15, 2020 annual meeting¹ and the January 18, 2021 regular meeting were not sufficiently detailed; and

¹ The Board holds an annual meeting and a regularly scheduled meeting every September. See Neb. Rev. Stat. §§ 13-506 (Supp. 2021) and 35-507 (Cum. Supp. 2020). Both meetings are held the same day, back to back, but are considered separate meetings.

3. The Board did not provide proper notice of its September 15, 2020 regular meeting.

The remainder of your allegations against the Board are not related to the Open Meetings Act. The Attorney General does not have general supervisory authority over local political subdivisions such as a rural fire district. Therefore, we will not address the remainder of your allegations.

ANALYSIS

Posting of the Open Meetings Act

Your complaint alleges the Board did not post a copy of the Open Meetings Act at its September 15, 2020, January 18, 2021, or February 22, 2021 meeting. Neb. Rev. Stat. § 84-1412(8) provides that “[p]ublic bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.” In its response, the Board admits that it was not complying with the Act with respect to these provisions. However, the Board has represented to us that it has been complying since its August 2021 meeting and will continue to comply in the future.

Specificity of Agendas

Your next allegation is that the agenda for the January 18, 2021 regular meeting and September 15, 2020 annual meeting was not sufficiently descriptive. First, you allege two new Board members were appointed at the January 18, 2021 meeting and this did not appear on the meeting agenda. You allege that Vice President Randy Bohaty appointed Greg Hall and Bret Davis to serve the remainder of two Board member terms due to the death of Tim Greiner and the resignation of T.J. Kinkaid. Second, you allege an election of Board members was held at the September 15, 2020 annual meeting but this was not included on the meeting agenda. In its response, the Board provided a copy of the agenda from both the September 15, 2020 annual meeting and the January 18, 2021 regular meeting. The January 18, 2021, agenda item No. 5, New Business, states, “Tim Greiner replacement.” In its response, the Board states this was the only appointment made at the January 18, 2021 meeting. It denies that an appointment was made to replace T.J. Kinkaid at the January 18, 2021 meeting. Next, the September 15, 2020 annual meeting agenda item No. 3 states “Open Positions,” and then lists “North Bluff, Oak, and Little Salt.”

Neb. Rev. Stat. § 84-1411(1)(e) provides that “[a]genda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting.” New Business agenda item “Tim Greiner replacement” is descriptive enough that the public would have reasonable notice that the District would discuss a replacement

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for Tim Greiner. In its response, the District confirms that elections were held for three Board member positions at the September 15, 2020 annual meeting. While the word "election" does not appear on the agenda for that meeting, the election of Board members at the annual meeting provided for in § 35-507 is required by Neb. Rev. Stat. § 32-506(2) (Cum. Supp. 2020). Because of the statutory requirement that Board members be elected at the annual meeting, it is not clear the agenda item identifying open positions for specified townships was deficient. For the sake of clarity, we will advise the Board to include specific reference to the "election" of Board members to open positions in future agendas.

Meeting Notice

Your complaint next alleges the Board did not provide proper notice of its September 15, 2020 regular meeting. In its response, the Board provided a copy of the notice for its September 15, 2020 annual meeting. However, this notice is specific to the annual meeting and does not give notice for the regular meeting. The Board admits it did not publish a notice specific to its regular meeting and believed the annual meeting notice was sufficient. We believe there should have been two separate notices based on the specific provisions relating to the annual meeting of registered voters of the District, the budget hearing, and Board meetings. See Neb. Rev. Stat. §§ 35-506, 35-507 (Cum. Supp. 2020) and 13-506 (Supp. 2021). As these notice provisions are not part of the Act, we have no authority to enforce compliance with these statutes. The Board has, however, represented to us that it understands both meetings must be noticed and corrected this defect for the September 2021 annual and regular meetings.

CONCLUSION

For the reasons stated above, we have determined the Board failed to follow the Act regarding posting of the Act at meetings but has complied with this requirement at subsequent meetings. There is no clear violation regarding the sufficiency of the Board's agenda detail for the elections held at the September 15, 2020 meeting, but we advise the Board to make specific reference to elections in future agendas at its annual meetings. Finally, the publication of separate notice is governed by statutes not enforced by this office, and the Board has advised this issue has been corrected.

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We are providing a copy of this disposition letter to counsel for the Board. At this time, we plan no further action and are closing our file. If you disagree with the analysis set forth above, you may wish to consult with your private attorney to see what other legal remedies may be available to you.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Laura A. Nigro
Assistant Attorney General

cc: James M. Egr

35-260-29