



STATE OF NEBRASKA  
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April 4, 2022

Via email at [REDACTED]  
Rodney Kinning

RE: *File No. 22-M-115; Knox County Sanitary and Improvement District #2;  
Rodney Kinning, Complainant*

Dear Mr. Kinning:

This letter is in response to your complaint alleging violations of the Nebraska Open Meetings Act ("Act"), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Supp. 2021), by members of the Knox County Sanitary and Improvement District #2 Board of Trustees ("SID #2") at a meeting held on February 5, 2022. In accordance with our normal procedure with respect to such complaints, we sent a copy of your complaint materials to SID #2 for a response. On March 21, 2022, we received a response. We have now completed our review of your complaint, and our findings and conclusion are set out below.

### **FACTS**

Our understanding of the facts in this case is based upon your complaint, the documentation you provided this office, and the information we received from SID #2.

SID #2 held a regular meeting on February 5, 2022. Trustees in attendance were Chairman Jim Coburn, Rod Tompkins, Greg Blomberg, and Denny Tilton. Trustee Deb Veldhuizen was not physically present at the meeting but participated by phone. During the meeting, the trustees voted on several items of new business, including a failed motion to appoint you as clerk. Ms. Veldhuizen voted on motions despite not being physically present. In many instances, Ms. Veldhuizen's vote made a difference in the outcome of the motion.

## ALLEGED VIOLATION

You allege that Ms. Veldhuizen's votes were improper and seek a declaration that "any business voted on at the February 5, 2022 meeting of the Knox County Sanitary and Improvement District #2 be declared invalid."

## DISCUSSION

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).

The Attorney General has 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).

Under the Act, a sanitary and improvement district board may hold a meeting by means of virtual conferencing only when it is necessary to address an emergency or when the governor declares a state of emergency and the territorial jurisdiction of the district falls within the declaration. Neb. Rev. Stat. § 84-1411(5) and (7). However, no such conditions existed on February 5, 2022. Thus, SID #2 was not authorized to meet, in whole or in part, by virtual conferencing. The Act provides that "[a]ny action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the records shall state how each member voted or if the member was absent or not voting." Neb. Rev. Stat. § 84-1413(2). Because Ms. Veldhuizen was not physically present at the meeting, the Act requires that she should have been marked absent and her votes should not have been counted.

In response to your complaint, the SID #2 has informed us that it "does not intend to go forward with any of the decisions of February 5, 2022 and will reconsider all items voted on at the meeting of February 5, 2022 and take new votes." The SID #2 indicated that it plans to take new votes at its April meeting. The Nebraska Supreme Court has held that "[i]t is a general principle of law that where a defect occurs in proceedings of a governmental body, ordinarily the defect may be cured by new proceedings commencing at the point where the defect occurred." *Pokorny v. City of Schuyler*, 202 Neb. 334, 341, 275 N.W.2d 281, 285 (1979). Provided that SID #2 acts, as it has indicated to our office it will, and takes new votes that strictly comply with the Act, any defects arising from Ms. Veldhuizen's participation at the February 5, 2022, meeting may be cured.

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## CONCLUSION

For the reasons discussed above, we have determined that the votes of the trustee who was not physically present should not have been counted. However, the alleged violation is capable of being cured. As the SID #2 has indicated its intent to take new votes to cure the violation, we will allow the body the opportunity to do so. We request that counsel for SID #2 inform this office when the violation has been cured. At that point, we will close this file. If you disagree with our analysis, you may wish to contact your private attorney to determine what additional remedies, if any, may be available to you under the Act.

Sincerely,

DOUGLAS J. PETERSON  
Attorney General



Elizabeth O. Gau  
Assistant Attorney General

c: Mark Fitzgerald  
03-025-30