



STATE OF NEBRASKA  
**Office of the Attorney General**

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ATTORNEY GENERAL

**LESLIE S. DONLEY**  
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January 13, 2023

Mary Agnes Haagensen  
[REDACTED]

RE: *File No. 22-M-139; Village of Henry Board of Trustees; Mary Agnes Haagensen, Complainant*

Dear Ms. Haagensen:

This letter is in response to your complaint received by this office on July 27, 2022, in which you allege violations of the Open Meetings Act ("Act"), Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2022) ("Act"), by members of the Village of Henry Board of Trustees ("Board"). As is our normal practice with complaints alleging violations of the Act, we forwarded your complaint to the public body involved and requested a response. We subsequently received responses from the village attorney Mark L. Kovarik. We have now had an opportunity to consider your complaint and the information we received from Mr. Kovarik. Our conclusion and future action in this matter are set forth below.

Your complaint sets out several allegations of violations of the Act. Those violations include failure to prepare and make available meeting minutes; failure to properly notice meetings; failure to prepare a meeting agenda; and improperly designating a meeting as an emergency meeting to address the lack of an agenda.<sup>1</sup> Your complaint contains meeting documentation which substantiates your claims that the meeting held on June 9, 2022, in no way constituted an emergency.

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<sup>1</sup> You have also alleged that meeting minutes have not been published in the Voice News, and that the Board chairperson appointed two new board members without providing notice to the public regarding the vacancies. Please note that our review of your complaint is based on our express authority in Neb. Rev. Stat. § 84-1414(2) to enforce provisions of the Act. Since these matters involve the enforcement of other statutes which are not part of the Act, they will not be addressed.

Mr. Kovarik addressed your allegations in correspondence to this office dated August 31, 2022. He indicated that after reviewing your complaint, meeting agendas and minutes, and discussing it with the village clerk, "it does appear that there were several violations of the act that appear to be in part a result of the combination of board member turnover and staff turnover and oversight." Mr. Kovarik further indicated that the violations did not appear to be intentional, and were "correctable through corrective action and proper education of officials regarding the Nebraska Open Meeting Act."

In additional correspondence dated October 24, 2022, Mr. Kovarik provided order confirmations and proofs of publication relating to village meetings, including a notice of special meeting published in the Star Herald on September 3. The notice states that a meeting would be held on September 6, 2022, and that the "[p]urpose of the meeting is to take corrective action and ratify the actions taken at the May, June, July and August meetings." Mr. Kovarik confirmed in his correspondence that "the board took corrective action at its September 6, 2022 meeting for all of the meetings at issue."

In *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979), a taxpayer filed suit against the city seeking to void actions of the city council relating to a land purchase due to alleged violations of the open meetings law. The court found that the city council had violated the law with respect to two special meetings due to inadequate notice, an improper closed session, and noncompliance with § 17-106 (requiring a written call and object for special meetings for cities of the second class). However, the court disagreed with the trial court's order permanently enjoining the city "from carrying out any action authorized' at the [invalid] meetings," finding such an order would permanently prevent the purchase of the land and appeared contrary to "the intent or purpose of the public meetings law." *Id.* at 341, 275 N.W.2d at 285. Instead, the court 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." *Id.* at 341, 275 N.W.2d at 285.

As indicated above, the Board took action at a special meeting held on September 6, 2022, to cure the various defects stemming from its May, June, July and August meetings. As such, there is nothing to void and no basis for further review by this office. However, we will take this opportunity to remind Board members, by providing a copy of this letter to Mr. Kovarik, that strict compliance with the Open Meetings Act in the future is imperative. In light of the corrective action taken by Board members on September 6, it will be much harder for members to argue that they did not knowingly violate the Open Meetings Act should similar violations occur in the future.<sup>2</sup>

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<sup>2</sup> Neb. Rev. Stat. § 84-1414(4) provides that "[a]ny 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."

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Since there is no legal basis for further action by this office, we 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 under the Act.

Sincerely,

MICHAEL T. HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Mark L. Kovarik

49-3138-30