



STATE OF NEBRASKA
Office of the Attorney General

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MIKE HILGERS
ATTORNEY GENERAL

LESLIE S. DONLEY
ASSISTANT ATTORNEY GENERAL

May 22, 2023

Via email at [REDACTED]
Gordon Hopkins

[REDACTED]

RE: *File No. 23-R-115; Village of Jansen; Gordon Hopkins, Fairbury Journal-News, Petitioner*

Dear Mr. Hopkins:

This letter is in response to your correspondence received by our office on May 5 and 18, 2023, in which you sought our assistance in obtaining certain public records belonging to the Village of Jansen (“Village”). You have also raised concerns about potential violations of the Nebraska Political Accountability and Disclosure Act and the Nebraska Open Meetings Act.¹ We considered the public record portions of your correspondence to be petitions under § 84-712.03(1)(b) of the Nebraska Public Records Statutes (“NPRS”), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2022). Our findings and future action are set out below.

RELEVANT LAW

Neb. Rev. Stat. § 84-712(4) (2014) sets out the basic procedure to obtain public records in Nebraska. This statute states that

[u]pon receipt of a written request for access to or copies of a public record, the custodian of such record shall provide to the requester as soon as is practicable

¹ Neb. Rev. Stat. §§ 49-1401 to 14,142 (2021, Cum. Supp. 2022), and Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2022), respectively.

and without delay, but not more than four business days after actual receipt of the request, an estimate of the expected cost of the copies and either (a) access to or, if copying equipment is reasonably available, copies of the public record, (b) if there is a legal basis for denial of access or copies, a written denial of the request together with the information specified in section 84-712.04, or (c) if the entire request cannot with reasonable good faith efforts be fulfilled within four business days after actual receipt of the request due to the significant difficulty or the extensiveness of the request, a written explanation, including the earliest practicable date for fulfilling the request, an estimate of the expected cost of any copies, and an opportunity for the requester to modify or prioritize the items within the request. The requester shall have ten business days to review the estimated costs, including any special service charge, and request the custodian to fulfill the original request, negotiate with the custodian to narrow or simplify the request, or withdraw the request. If the requester does not respond to the custodian within ten business days, the custodian shall not proceed to fulfill the request. The four business days shall be computed by excluding the day the request is received, after which the designated period of time begins to run. Business day does not include a Saturday, a Sunday, or a day during which the offices of the custodian of the public records are closed.

The statute requires the custodian to respond to the requester *no more than four business days after actual receipt of a written request*. The response may take several different forms. For example, the custodian (1) can provide the requester with the requested records; (2) deny access to the records, and provide the basis for denying access; (3) indicate that more time is necessary to produce the requested records; or (4) inform the requester that there are no records responsive to the request. There is nothing in § 84-712(4) that requires the custodian to produce responsive records within the four business day time frame when circumstances warrant a delay.

DISCUSSION

May 5 Petition

At our request, on May 11 you provided the undersigned copies of your four public records requests at issue, dated April 26, April 28 and two on May 2. You included the responsive records provided to you by attorney Maureen Freeman-Caddy² on May 10. On May 14, you confirmed that the Village had produced all responsive records and that any other records not provided to you “do not exist.” Since you have now received records responsive to your public records requests, no further action by this office is necessary. However, we will remind the Village Attorney, Gregory Kratz, that § 84-712(4) requires a

² We understand that Ms. Freeman-Caddy was retained by the Village board to handle this matter due to a conflict of interest by Mr. Kratz.

written response no later than four business days after actual receipt of a written request for public records.

May 18 Petition

This petition involves a public records request sent to the Village chairperson and Ms. Freeman-Caddy on May 11, requesting “copies of all village’s bond reports for the last six years, the treasurer’s report for April, 2023, and all the bills that were paid in that April treasurer’s report.” Ms. Freeman-Caddy responded to your request on May 17, indicating that she was unable to respond to the request within the four business days because she did not have access to the records and there was no clerk available to assist. Ms. Freeman-Caddy further indicated that she would pursue your request as soon as reasonably possible.

We spoke to Ms. Freeman-Caddy on May 18 about your request. She informed us that due to recent resignations, the Village board is down to only one member.³ There is no clerk. She indicated there were technical challenges in scanning records at the Village office. At that time, Ms. Freeman-Caddy represented that records would be retrieved, scanned and provided to you as soon as possible. She also indicated that there are no Village bond reports, which is consistent with her response to your May 2 request for the “village’s most recent bond report.”

You state in your petition “that the Village Board of Jansen has again failed to provide public records for a Freedom of Information Act⁴ request filed more than four days ago.” We disagree. As noted above, § 84-712(4) permits the custodian to delay the production of public records when “due to the significant difficulty or the extensiveness of the request.” Ms. Freeman-Caddy timely responded to your May 11 request by sending you an email on May 17 (four business days *after* May 11), and she informed you of the difficulties she was facing in producing the records within the four business day time frame. She further advised that she would produce the records as soon as reasonably possible.⁵ On May 19, Ms. Freeman-Caddy copied us on an email addressed to you in which she provided you copies of records responsive to your May 11 request, as well as another request you submitted on May 15. As the Village has provided the requested records, there is no violation of the NPRS.

³ Village Attorney Gregory Kratz issued a press release dated May 19, 2023, advising of the resignation of four board members, resulting in the lack of a quorum to conduct further village business, and that a special election will be necessary. Copies of that press release and notification to the Secretary of State of the need for a special election are attached.

⁴ The Freedom of Information Act is a federal law, codified at 5 U.S.C. § 552, which generally provides the right to access *federal* agency records or information. Your access to records of or belonging to the Village, or any other governmental unit of the State of Nebraska, is governed by the NPRS.

⁵ In the future, any written delay letter must “include[e] the earliest practicable date for fulfilling the request”

Gordon Hopkins
May 22, 2023
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As to the remaining allegations in your correspondence, to the extent this office has any authority over local political subdivisions, like the Village of Jansen, it is through express statutory provisions requiring us to enforce the NPRS and the Open Meetings Act. The Attorney General has no supervisory power over villages. As a result, allegations relating to services performed (or not performed) under a maintenance contract entered into by the Village and a private company fall outside of our purview. We also do not consider former trustee Kesha Eldridge's purported decision(s) relating to this contract to constitute a violation of the Open Meetings Act by the entire Board. In any event, Ms. Eldridge is no longer a trustee and, more importantly, there is no Village board.

Finally, any concerns you may have relating to conflicts of interest of public officials should be directed to the Nebraska Accountability and Disclosure Commission,⁶ which is the state agency charged to handle such matters.

Sincerely,

MIKE HILGERS
Attorney General



Leslie S. Donley
Assistant Attorney General

Attachments

c: Maureen Freeman-Caddy (via email only)

49-3222-30

⁶ See <https://nadc.nebraska.gov/>.

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**Also Admitted in Kansas*

+Also Admitted in Connecticut & New York

May 19, 2023

Secretary of State – Election Division

Attn: Mr. Wayne Bena

PO Box 94608

Lincoln, NE 68509

Re: Village of Jansen – Resignation of 4 board members

Dear Mr. Bena:

The law firm of Smith Schafer Davis LLC provides legal services for the Village of Jansen and I, Gregory D. Kratz, act as Village Attorney. I am writing you to inform you that since April 30, 2023 four board members have submitted their written resignations. With only one remaining board of trustee's member there is currently no longer a quorum available to conduct further village business.

I have attached with this letter the resignations of Matthew Leatherwood, dated April 30, 2023, whose term was set to expire in 2026; Stony Brooks, dated May 1, 2023, whose term was set to expire in 2026; Joyce Ambrose, dated May 17, 2023, whose term was set to expire in 2026; and Kesha Eldridge, dated May 17, 2023, whose term was set to expire in 2024. The remaining board of trustee member is Janene Russell.

State and local laws provide that whenever half or more of the board seats are vacant the Secretary of State must conduct a special election.

If there is anything I can assist you with, please do not hesitate to contact me.

Respectfully,



Gregory D. Kratz

Village Attorney, Village of Jansen

Enc: Resignations

Fairbury Office:

510 D Street | Fairbury, NE 68352 | (402) 729-3331

April 30, 2023

Dear Chairperson Ambrose,

Please consider this my resignation from the Village of Jansen Board of Trustees, effective immediately.

It continues to be clear that you and Kesha are not the least bit interested in moving forward as a cohesive board. I listed several things in a letter to the board back in March that need addressed and progress continues to be stonewalled. Training for our new clerk (who I see has resigned) continues to be delayed, all while refusing my assistance.

It is also clear to me that, while secrecy, lack of transparency and Open Meetings Act issues abound, no one at the county or state level is the least bit interested in intervening, least of all our own village attorney. With that in mind, I'm not interested in helping fix a ship that no one cares to be fixed.

Good luck. I suspect you'll need it in the coming months.

Best wishes,

Matthew Leatherwood



Jansen Board of Trustees <jansenboardoftrustees@gmail.com>

Stoney Brooks Board Member Resignation

Stoney Brooks <stoneybrooksdwg@gmail.com>

Mon, May 1, 2023 at 9:04 PM

To: "Jansenboardoftrustees@gmail.com" <Jansenboardoftrustees@gmail.com>

To whom it may concern,

At this time, I am resigning my position as a board member of the Village of Jansen. My work schedule has become more time consuming and I simply cannot devote the appropriate amount of time to serve effectively as a board member any longer. I will not make further comments regarding this decision. I appreciate the opportunity that I was given to serve this little community.

Thank you,

Stoney Brooks

To the Village of Jansen Board Members and Community,

May 17, 2023

This letter serves as my resignation for the Jansen village board and Chairperson. I truly believe in this community as I have been a resident for the past 32 years and longed to see continued growth and improvements. I will continue to advocate for growth and activities in the village but will not do so as a member of the board.

In my position as board member and chairperson, there has been much hostility and public defamation by others in the village and neighboring communities this has led to undue stress, emotional exhaustion, and time away from my family. Not having adequate staffing for the clerk/treasurer position has caused extensive use of my time completing the duties of that position without any compensation.

I appreciate the opportunity to serve the community as a member of the board but will not continue as of receipt of this letter. I hope the new chairperson and board members keep the best interests of all residents in mind as they move forward in the future.

Sincerely,



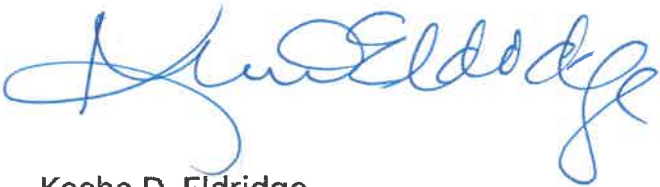
Joyce Ambrose

May 17, 2023

To whom it may concern:

Please accept this as my resignation from the Jansen Board of Trustees effective immediately. I no longer wish to serve a community filled with such animosity. Additionally, I no longer wish to have my privacy invaded as well as continue to be harassed by Gordon Hopkins at the Fairbury Journal Newspaper. In my opinion, his lack of factual representation of the Village is extremely one sided and a disgusting display and misuse of his position at FJN. When others have voiced & written the same concerns, maybe his disturbing behavior should be looked at. Add, yet another Village loss, due to FJN's unprofessionalism. Gordon Hopkins behavior as well as the immature behavior of a few individuals in the community continues to cause people to quit. Things can not be done timely manner with no employees plus I refuse to be part of the impending compliance issues that incidentally have not been an issue for all the years I was the board chair. I refuse to continue to pick up the slack and constantly train new employees that are leaving 100% due to these people's behavior as well as be scrutinized for getting paid to do such work. I hope that these people realize how their childish behavior is causing destruction and damage to the Village of Jansen.

I want to thank all of my supporters throughout the years I have served the Village of Jansen. I stayed as long as I did because of each of you. Every decision I made, I know was made with the best interest of our village in mind.



Kesha D. Eldridge

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May 19, 2023

PRESS RELEASE

FOR IMMEDIATE RELEASE

Contact:

Gregory D. Kratz,

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Fairbury, NE 68352

402-729-3331

gdk@ssdglaw.com

Village Attorney, Village of Jansen

VILLAGE OF JANSEN TO HOLD SPECIAL ELECTION

Jansen, NE – Following the resignations of four Board Members, the Village of Jansen Board of Trustees no longer has a quorum to conduct any further village business. The Nebraska Secretary of State has been notified and will be conducting a special election. Further information regarding the special election will be provided by the Nebraska Secretary of State and the Jefferson County Election Commissioner.

Matthew Leatherwood resigned on April 30, 2023, whose term was set to expire in 2026. Stony Brooks, resigned on May 1, 2023, whose term was set to expire in 2026. Joyce Ambrose, resigned on May 17, 2023, whose term was set to expire in 2026. Kesha Eldridge, resigned on May 17, 2023, whose term was set to expire in 2024. The remaining board of trustee member is Janene Russell.

There will be no further meetings of the Village of Jansen Board of Trustees until after the special election.

Fairbury Office:

510 D Street | Fairbury, NE 68352 | (402) 729-3331