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February 2, 2011

Todd Heyen
1502 364th Rd
Seward, NE 68434

Celeste Johnson
PO Box 283
Utica, NE 68456

Re: *File No. 10-M-146; Village of Utica Board of Trustees; Todd Heyen,
Celeste Johnson*

Dear Mr. Heyen and Ms. Johnson:

This letter is in response to your correspondence received by us on December 14, 2010 and December 20, 2010, in which you requested that this office investigate certain alleged violations by the Village of Utica Board of Trustees (the "Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2008, Cum. Supp. 2010). As is our normal procedure, we requested a response from the Board and received a response from the attorney for the Board on January 14, 2011. We have now had an opportunity to review your allegations and the Board's response in detail and our conclusions are set out below.

FACTS

Our understanding of the facts in this case is based upon your correspondence, along with the response from the Board and the Board agenda and minutes of November 1, 2010. Mr. Heyen's complaint contains additional allegations from Ms. Johnson's complaint, but as the first issue is the same, we will address them together. Your Open Meetings Act concerns are as follows:

1. Members of the public were required to leave an Open Meeting on December 6, 2010.
2. The room in which the Board regularly meets only has seating for three members of the public to attend, which is inadequate for the usual audience present for any given open meeting.

3. Minutes do not accurately reflect what was discussed at the November 1, 2010 meeting with respect to Mr. Heyen's agenda item.

ANALYSIS

December 6, 2010 meeting

The Open Meetings Act states that it is the "policy of this state that the formation of public policy is public business and may not be conducted in secret. Every meeting of a public body shall be open to the public . . ." Neb. Rev. Stat. § 84-1408 (2008). Your first complaint relates to the Board meeting of December 6, 2010. You state the public was asked to leave, unless they had an item on the agenda. The Board disputes this allegation.

The Board states that you believed you would be on the agenda at this meeting, but were not. A group of people accompanied you to this meeting, and presumably, Ms. Johnson was part of this group. You were permitted to address the Board briefly regarding the ongoing fence dispute you have relating to the beer garden you hosted last summer. However, the Board claims that you then began to have a discussion with the Deputy Sheriff while the Board was continuing the meeting on other agenda items. "If an effort to prevent further disruption of the public meeting, Mr. Heyen and Deputy Blath were asked to continue their conversation in the outer hallway adjoining the meeting room." After you complied, the Board then continued with its meeting, and you and those accompanying you to the meeting left after your conversation with Deputy Blath ended.

Clearly, there are two differing versions of what occurred at the December 6, 2010 meeting. However, absent compelling evidence to the contrary, we must assume that the Board acted in good faith and in compliance with the Open Meetings Act. We find the Board's explanation to be reasonable. Therefore, in this instance, we must assume the Board has acted in accordance with the Open Meetings Act and cannot find a clear violation of the Open Meetings Act with respect to this allegation.

Seating available at meetings

Your second complaint is that there is very limited seating in the room in which the Board meets. You state there is only seating for three people in the audience, and the remainder must stand in the hall outside the meeting room.

The Open Meetings Act prohibits a public body from holding a meeting in a location "known by the body to be too small to accommodate the anticipated audience" in order to circumvent the requirements of the Act that the public have the right to attend meetings. Neb. Rev. Stat. § 84-1412(4) (2008).

The Board's response letter states that a seven-year veteran of the Board "could not recall any normal month when the meeting room used could not accommodate

anyone who wished to attend” and that the meeting room holds up to nine audience members. In addition, the Board has assured this office that it is equipped to move its meetings to a larger room to accommodate any large crowds who attend meetings, but that it is rare for audience members to be present for the entire meeting.

Again, it is clear that there are two opposing viewpoints as to the accommodations for members of the public. However, it does not appear to us that the public body is utilizing a meeting location it knows to be too small in order to circumvent the Open Meetings Act. Therefore, we can find no violation as to this allegation.

Accuracy of November, 2010 minutes

The Open Meetings Act provides that “each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.” Neb. Rev. Stat. § 84-1413(1) (2010). This does not require the minutes to be a transcription of a meeting.

Your complaint is that the minutes from the November 1, 2010 meeting are inaccurate, as the minutes do not reflect your request to be put on the agenda for the next meeting. The Board has provided the agenda for this meeting, which states that you would be speaking during the meeting as to “fencing for beer garden/street dance; comprehensive plan; paperwork for Bullet Hole.” The minutes state that you spoke regarding a meeting for December 6, 2010 with the Sheriff’s Department, zoning changes, beer gardens, and the comprehensive plan. The Board took no action regarding any of these items.

You are correct that the minutes do not state you requested to be placed on the agenda for the next Board meeting. However, the Board has informed us that such a request would not normally be found in the minutes of a meeting, as it does not go to the substance of what was discussed. The Board is also correct. In addition, the Board is not required to detail public comment which the Board itself does not discuss or take action on. We consider your agenda item to be more similar to public comment than an item placed on the agenda by the Board of a topic it will discuss and take action on.

The Board also explains there may have been a misunderstanding in that the Clerk did not interpret your December 6, 2010 meeting with the Sheriff to be a request to be on the next Board agenda. The Board notes that it places notice of the upcoming meetings the week prior to its normal meetings. If you believe you have requested to speak at the next meeting, we might suggest viewing the agenda at least 48-hours before the meeting to ensure an opportunity to add you to the agenda if you have been mistakenly omitted. However, please be advised that the Board is not required by the Open Meetings Act to place you on their agenda for any given meeting. They are also not required to discuss or take any action on an item you raise at a meeting as a member of the public.

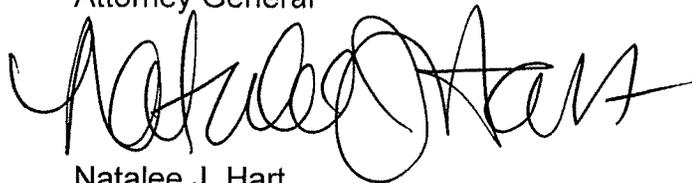
The minutes of the November 1, 2010 meeting are adequate, and we do not find that the Board has violated the Open Meetings Act

CONCLUSION

We do not find any violations of the Open Meetings Act related to your complaint of December 14, 2010 and December 20, 2010. If you disagree with the analysis we have set out above, you may wish to consult your private attorney to determine what additional remedies, if any, are available to you under the Open Meetings Act.

Sincerely,

JON BRUNING
Attorney General

A handwritten signature in black ink, appearing to read "Natalee J. Hart". The signature is fluid and cursive, with a large loop at the end.

Natalee J. Hart
Assistant Attorney General

cc: Michael G. Mullally, Village Attorney

02-191-30