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July 1, 2013

Jan Stokebrand
2181 County Road 2250
DeWitt, NE 68341

RE: *File No. 12-M-141; Tri County Public Schools Board of Education; Jan Stokebrand, Complainant*

Dear Ms. Stokebrand:

This letter is in response to your complaint received by us on November 27, 2012, in which you allege that the Tri County Public Schools Board of Education (the "Board") violated the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2008, Cum. Supp. 2012) (the "Act"), with respect to an agenda for a workshop held on November 17, 2012. As is our normal practice with complaints alleging violations of the Act, we contacted the public body involved and requested a response. In this case, we forwarded your complaint to then Board president Michael Pesek. On January 3, 2013, we received a response from attorney Kelley Baker, who responded on behalf of the Board. We have now had an opportunity to consider your complaint and the Board's response in detail. Our conclusion and future action in this matter are set forth below.

Before we begin, we would like to point out that Neb. Rev. Stat. § 84-1414 of the Open Meetings Act gives this office general enforcement authority over the Act. This authority requires us to determine whether a public body has complied with the various procedural provisions of the Act, relating to agenda, notice, closed session, voting, minutes, etc. However, our authority does not extend to scrutinizing substantive decisions made by a public body in the course of a public meeting. These are matters inherent to a public body's *governance*, over which we have no authority or jurisdiction. As a result, we cannot determine the legality or appropriateness of a decision, act, motion, etc. made by a public body which does not implicate a provision of the Open Meetings Act. Moreover, we have no general supervisory authority over local governmental subdivisions in Nebraska, including school districts. Consequently, your concerns relating to the superintendent's contract and his "unresigning" will not be addressed.

FACTS

Our understanding of the facts in this matter is based on your complaint and the information contained in the Board's response.

At the time of your complaint, you were a member of the Tri County Public Schools Board of Education. You indicate that notice for a workshop scheduled for November 17, 2012, at 9:00 a.m., was posted one week in advance on the district's website, and that the agenda for the workshop was presented at the Board meeting on November 12, 2012.[1] You contend that the agenda was changed and e-mailed on Friday, November 16, 2012, at 3:14 p.m., before the Saturday 9:00 a.m. workshop. You indicate that the amended agenda "involved the major issue of adding the Superintendent's Contract, as the first topic of discussion at workshop." You indicate that this is the result of the superintendent "unresigning" the previous week.

You further indicate that all previous workshop agendas have been posted online at the district's website; however, this particular agenda was not posted. You state that the agenda was only available in superintendent's office, but due to the late amendment, and because the school closed at 3:35 on Friday, the public would not have access to it.

Mr. Baker informs us that, contrary to your allegation that the agenda was amended and e-mailed on Friday, November 16, at 3:14 p.m., the agenda at issue was actually amended on Tuesday, November 13, 2012. According to Mr. Baker, the amendment occurred after Superintendent Finken consulted with Board President Pesek. Mr. Baker states: "The revised agenda was available to members of the board and the public at the central administrative office since Tuesday the 13th."

Mr. Baker indicates that Board policy requires that "[n]otice of regular and special meetings shall be posted in three prominent places within the school district at least 48 hours before the announced beginning of the meeting." Mr. Baker states that "[s]chool personnel published notice of the meeting on September 14th in compliance with the Act and board policy by posting it on the door of the school district's central office, in the post offices in Dewitt, Swanton, and Plymouth, and on the school district's website at www.tricountyschools.org."

With respect to the agenda, Mr. Baker indicates that Superintendent Finken normally provides a tentative agenda for work sessions before drafting a final version, and one was prepared and distributed at the November 12, 2012, regular meeting. He notes that the tentative agenda stated: "Agenda is available for public inspection in the Office of the Superintendent."[2] According to Board policy 2010:

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1 For the record, the words "Tentative Agenda" appear in the agenda heading.

2 We note that this language appears in the published notice, not in the tentative agenda.

> The tentative agenda and any supporting materials that are available on the Thursday preceding each board meeting will be prepared by the superintendent in consultation with the board president. The materials will be sent or delivered to each board member in advance of the meeting.

Mr. Baker indicates that on Friday, November 16, 2012, Superintendent Finken supervised the distribution of the board packets to Board members. He states that the packets consisted mainly of the revised agenda which supplemented the tentative agenda previously distributed to Board members at their meeting on November 12, 2012.

DISCUSSION

Neb. Rev. Stat. § 84-1408 (2008) of the Nebraska Open Meetings Act provides:

> *It is hereby declared to be 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 in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.*

The primary purpose of the public meetings law is to ensure that public policy is formulated at open meetings. *Marks v. Judicial Nominating Comm.*, 236 Neb. 429, 461 N.W.2d 551 (1990). The Nebraska public meetings laws are a statutory commitment to openness in government. *Wasikowski v. The Nebraska Quality Jobs Board*, 264 Neb. 403, 648 N.W.2d 756 (2002); *Grein v. Board of Education of the School District of Fremont*, 216 Neb. 158, 343 N.W.2d 718 (1984).

Neb. Rev. Stat. § 84-1411 of the Act requires that public bodies provide "reasonable advance publicized notice" of its meetings "by a method designated by each public body and recorded in its minutes." With respect to agendas, the statute further requires:

> Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the principal office of the public body during normal business hours. Agenda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting. <u>Except for items of an emergency nature, the agenda shall not be altered later than (a) twenty-four hours before the scheduled commencement of the meeting</u> or (b)

> forty-eight hours before the scheduled commencement of a meeting of a city council or village board scheduled outside the corporate limits of the municipality. The public body shall have the right to modify the agenda to include items of an emergency nature only at such public meeting

(Emphasis added.) Pursuant to the statute, a public body must decide whether to include an agenda in its publicized notice, or maintain a current agenda at its main office, and make it available for public inspection. In the present case, the Board has opted to maintain the agenda at the superintendent's office. As such, we consider this to be the official meeting agenda for the Board.[3]

With these statutory requirements in mind, we have considered your allegation that the Board amended its agenda within the twenty-four hour time frame prohibited by § 84-1411, and are unable to conclude such a violation occurred. In that regard, the Board has represented to us that the agenda maintained in the superintendent's office was amended on November 13, 2012, and was available to the members of the Board and the public for almost four business days prior to the commencement of the workshop. The Board has also represented that on November 14, 2012, timely notice for the workshop was posted in four locations within the district's territory and online. The fact that you personally received a revised agenda on Friday at 3:14 p.m. before the Saturday 9:00 a.m. workshop does not establish a violation of the Open Meetings Act. And you have provided us no other information that would support your allegation that the agenda was changed in violation of the statute. Additionally, "'[i]n the absence of evidence to the contrary, it may be presumed that public officers faithfully performed their official duties and that absent evidence showing misconduct or disregard of law, the regularity of official acts is presumed.'" *Wolf v. Grubbs*, 17 Neb. App. 292, 314, 759 N.W.2d 499, 520 (2009) quoting *KLH Retirement Planning v. Okwumuo*, 263 Neb. 760, 764, 642 N.W.2d 801, 805 (2002).

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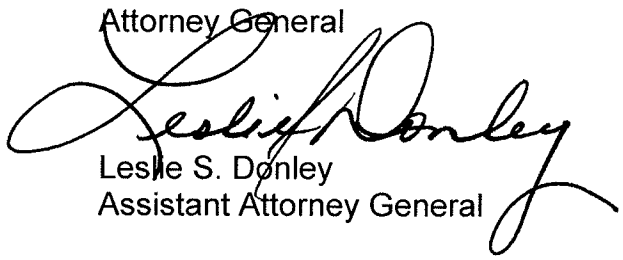
[3] We understand from your complaint that the agenda for the November 17, 2012, workshop was not posted on the district's website. However, there is no provision in the Open Meetings Act [or the Board's policies] that require posting agendas on the Internet. Consequently, the Board did not violate the Act by failing to post this particular agenda.

CONCLUSION

We believe that the official meeting agenda kept at the superintendent's office was amended on November 13, 2012, not on November 16, 2012, and not within twenty-four hours of the commencement of the meeting. Consequently, no violation of the Open Meetings Act occurred with respect to this particular agenda. Since no further action by this office is necessary, we are closing this file. However, you may wish to discuss this matter with your private attorney to determine what remedies, if any, may be available to you under the Open Meetings Act.

Sincerely,

JON BRUNING
Attorney General



Leslie S. Donley
Assistant Attorney General

cc: Kelley Baker

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