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February 24, 2011

Jeannie Dunn
jeannidunn@windstream.net

Richard Therrien
rct@windstream.net

Re: *File No. 11-M-105; Village of Utica Board of Trustees; Jeannie Dunn and Richard Therrien*

Dear Ms. Dunn and Mr. Therrien:

This letter is in response to your correspondence received by us on January 26, 2011, 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 February 15, 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. Your Open Meetings Act concerns relate to the November and December 2010 meetings and the January 2011 meeting. You make several different complaints, which are each addressed below.

ANALYSIS

The first portion of your complaint letter raises allegations with respect to November and December 2010 meetings of the Board. Identical complaints were addressed by this office earlier this month in our response to another complaint. We have enclosed that letter herein, for your information. We will not further investigate or address these allegations.

The remainder of your complaint relates to the January 2011 meeting of the Board. You first complain that the Board opened up a larger room to accommodate those members of the public attending the meeting, and the meeting room was cold. First, the Board is to be commended for moving their meeting to a large space to accommodate the public. Second, the Open Meetings Act does not require a meeting to be held with a particular level of climate control. In addition, the Board assures us that the heat was turned on when the meeting began. There is no violation of the Open Meetings Act related to this complaint.

Next, you allege that members of the Board and the village clerk were "openly hostile and rude", but you provide no specific examples of this alleged behavior. The Board denies your allegations. Again, the Open Meetings Act does not oblige the members of the Board to act with any certain amount of decorum. There is no violation of the Open Meetings Act with respect to the alleged behavior of the members of the public body.

Third, you object to the response given by the public body that a matter was "taken under advisement." Again, you provide no specifics regarding this allegation. However, in the minutes of the January 3, 2011 meeting provided to us by the Board, we note that Mr. Todd Heyen spoke to the Board about an issue and the "trustees will take his comments under consideration." Mr. Heyen was on the agenda as "Todd Heyen – accusations." We assume this is matter of which you speak. Mr. Heyen is a member of the public who was permitted to address the Board during this meeting. The Open Meetings Act does not require a public body to answer questions posed by members of the public, or to respond to any public comments made during meetings. The Board has not violated the Open Meetings Act by taking Mr. Heyen's comments under advisement. In fact, the Board has complied with the Act by doing so, as discussing or taking action on an item not specifically on the agenda would be a violation of the Act. The Board cannot take any action, other than placing a topic under advisement, on matters raised by members of the public.

Finally, you complain that the Board took items "completely out of order" from the agenda. You did not include the agenda or the minutes from the January 3, 2011 meeting, but the Board provided them to us. It appears that the Fire Chief report was heard later in the meeting that is indicated on the agenda. However, all the other agenda items were taken in the order in which they appear. We cannot agree with your characterization that the meeting was "completely out of order." However, we do note that the Board assigns times for each of its agenda items. While the Open Meetings Act does not specifically address this practice, we would strongly caution the Board, by a copy of this letter, to ensure that if times are placed on an agenda corresponding to certain agenda items, that the Board adhere to those times and not hear matters any earlier than their listed time. See, Neb. Rev. Stat. §84-1411(2008). Hearing items earlier than their assigned time hinders the very purpose of the Open Meetings Act, and prevents the public from being permitted to comment on those items. See, Neb. Rev.

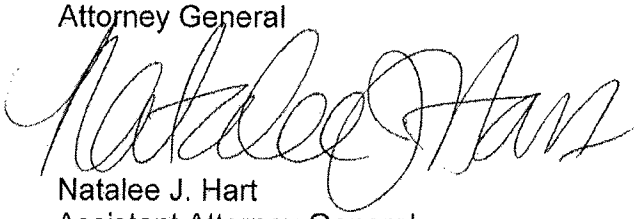
Stat. §§ 84-1408, 84-1214 (2008). Since the Fire Chief report was heard *later* in the meeting than originally planned, however, those in attendance were not harmed by this, as they could have stayed for the remainder of the meeting to hear the fire chief's report. There has been no violation of the Open Meetings Act related to this complaint.

CONCLUSION

We do not find any violations of the Open Meetings Act related to your complaint. 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



Natalee J. Hart
Assistant Attorney General

cc: Michael G. Mullally, Village Attorney

02-206-30