STATE OF NEBRASKA
# Office of the Attorney General
2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
FAX (402) 471-3297 or (402) 471-4725

**DOUGLAS J. PETERSON**
ATTORNEY GENERAL

**LESLIE S. DONLEY**
**ASSISTANT ATTORNEY GENERAL**

December 23, 2015

Alfred J. Pieper
509 4th Avenue
P.O. Box 246
Minatare, NE 69356

RE: *File No. 15-M-120; City of Minatare; Alfred J. Pieper, Complainant*

Dear Mr. Pieper:

This disposition letter is written in response to the complaint received by this office on May 4, 2015, in which you allege violations of the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Supp. 2015) (the "Act"), by members of the Minatare City Council ("City Council").[1] Specifically, you are challenging certain actions by members of the City Council during its meeting on September 15, 2014. As is our normal practice with complaints alleging violations of the Act, we requested the public body involved to provide us a response to your complaint. In this regard, we received a response to your complaint from the then city attorney Audrey Elliott. We have now had an opportunity to consider your complaint and the City's response in detail. Our conclusion and future action in this matter are set forth below.

## FACTS

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

In your complaint, you state that at the time of the meeting at issue, you were serving as the mayor of the City of Minatare. The last item on the September 15, 2014, meeting agenda stated: "10. Employees Concerns with Mayor Pieper—Robert, Tom, Carolyn, Kevin." Once the preliminary meeting matters were addressed, you indicate that you requested that this particular agenda item be moved up on the agenda "in case employees needed to leave early." You state that once the City Council approved the

---

[1] We note that you indicated on the Constituent Complaint Form submitted to our office that you were filing your complaint against the city attorney. However, only public bodies, as that term is defined in Neb. Rev. Stat. § 84-1409 (2014), are subject to the Open Meetings Act. *See also* Neb. Rev. Stat. § 84-1414 (2014).

*Printed wth soy ink on recycled paper*

change in the order of the agenda, you then "requested that the issue to go into a closed session for the protection of my reputation." You indicate that you were denied before you could call for a motion to close the meeting. You state that you were then subjected to "character assassination" by city employees, City Council members, and finally citizens in the audience, aimed at you as mayor and on a personal level. You also indicate that a member of the City Council stated that a petition seeking your recall was being circulated, that most of the statements made during the meeting were recounted in the recall affidavit, and that accusations listed in the affidavit were included in the meeting minutes. You conclude by stating:

> I feel that because of the situation of letting the issues against me be said during the open meeting had done devastating amount of damage to my reputation, which is still being extremely effected today, and has also caused me severe emotional distress.

Ms. Elliott informs us that you did not ask for a closed session at any time during the meeting on September 15, 2014. To the contrary, she indicates that you quite emphatically asked anyone who had complaints against you to address them immediately. Ms. Elliott informs us that your exact words in this regard were as follows:

> I'm going to give everybody a chance right now, if there are any complaint or anything, again [sic] me, I want to know right now. I'll sit down and it's open to the public. Anyone who wants to complain, go ahead.

Ms. Elliott also informs us that one of the city employees inquired about closed sessions, and she explained how the process would work. Ms. Elliott states that even after her explanation, no motion was made to close the meeting. Ms. Elliott further advises that in Op. Att'y Gen. No. 89063 (October 12, 1989), the Attorney General determined that closed sessions convened to prevent needless injury to an individual's reputation relate to the *employees* of the public body as opposed to members of the governmental body itself.[2]

## DISCUSSION

As you know, 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); *Wolf v. Grubbs*, 17 Neb. App. 292, 759 N.W.2d 499 (2009). 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).

---

[2] For reasons stated below, we do not believe that the opinion cited is applicable to the circumstances presented here.

You have alleged that the City Council violated the Open Meetings Act when it failed to go into closed session to discuss the complaints made against you by city employees, City Council members and members of the public. You allege that most of the information in the recall affidavit were statements made during this meeting. You believe that because the complaints about you were conveyed publicly, your reputation has been damaged causing you severe emotional distress.

Neb. Rev. Stat. § 84-1410 of the Open Meetings Act provides, in pertinent part:

> (1) Any public body may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest or for the prevention of needless injury to the reputation of an individual and if such individual has not requested a public meeting. The subject matter and the reason necessitating the closed session shall be identified in the motion to close. . . .
>
> *(4) Nothing in this section shall be construed to require that any meeting be closed to the public.*

(Emphasis added.) In the present case, the Minatare City Council declined to close its meeting on September 15, 2014, and, as indicated above, there was no obligation on the part of the City Council to do so.

We have also considered whether you as mayor had the ability to call for a motion to close, or whether you had the ability to make such a motion, and have concluded that you did not. Your duties relating to the meetings of the City Council are set out in Neb. Rev. Stat. § 17-110 (Cum. Supp. 2014), and provide, in pertinent part, that

> [t]he mayor shall preside at all meetings of the city council of a city of the second class. The mayor may vote when his or her vote would provide the additional vote required to attain the number of votes equal to a majority of the number of members elected to the city council on any pending matter, legislation, or transaction, and the mayor shall, for the purpose of such vote, be deemed to be a member of the council. . . .

This statute specifically provides that an individual is a member of the city council only when called upon to reach the number of votes required by statute. However, the fact remains that the mayor of a second class city is a separately elected official from the members of the city council.[3] *See* Neb. Rev. Stat. §§ 17-103 to 17-107 (2012). And, as indicated above, only a *public body* may move to close its meetings. Consequently, we

---

[3] There are ten cities in Nebraska which have adopted the city manager form of government in accordance with Neb. Rev. Stat. §§ 19-601 through 19-648 (2012), where the city council elects one of its members to serve as president (ex officio mayor). The City of Minatare is not one of those cities.

believe that even if you had called for a motion to close, or moved the matter yourself, the members of the City Council had no obligation to respond.

Finally, Ms. Elliott has represented to this office that you made no attempt to get the City Council to close its meeting to address the complaints about you. To the contrary, you were the one asking to have the agenda item moved up and, according to Ms. Elliott, you were the one who emphatically sought to address the complaints against you publicly. Obviously, we have two very different versions of what happened during the meeting on September 15, 2014. However, in the end, we believe that Ms. Elliott's account and the meeting minutes accurately describe what happened at this meeting, and neither one supports the allegations in your complaint.

## CONCLUSION

In sum, the decision whether to close its meetings to allow individuals to voice their complaints about you was at the sole discretion of the Minatare City Council. We further conclude that you as mayor had no ability to call for a motion or move for a closed session because you are not a member of the public body. Finally, we conclude that the City Council's decision *not* to close its meeting in no way constitutes a violation of the Open Meetings Act. Consequently, since no further investigation is warranted by this office, we are closing our file.

DOUGLAS J. PETERSON
Attorney General

Leslie S. Donley
Assistant Attorney General

c: James W. Ellison

49-1473-29