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April 7, 2016

Roger Lathrop
1321 Locust St
Sutherland, NE 69165

Re: *File No. 16-M-103; Village of Sutherland Board of Trustees; Complainant Roger Lathrop*

Dear Mr. Lathrop:

This letter is in response to your correspondence received by us in which you requested that this office investigate alleged violations by the Village of Sutherland Board of Trustees (the "Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2014, Supp. 2015). As is our normal practice with such complaints, we forwarded a copy of your complaint to the public body which is the subject of the complaint. We have received a response from the Village of Sutherland from James Bliss, Village Board Chairman, and the Village attorney, Rory J. Roundtree, and have now had an opportunity to review your complaint, the Board's response, and all of the accompanying documentation in detail. Our conclusion in this matter is set forth below.

As an initial matter, portions of your complaint concern the use of the Sutherland Fire Department by the Sutherland Care Center and statements made by village officials as to ambulance service. This office has no general supervisory authority over governmental subdivisions in Nebraska, including the Village of Sutherland. We have enforcement duties related to the Nebraska Open Meetings Act (Neb. Rev Stat. §§ 84-1407 through 84-1414) and the Nebraska Public Records Statutes (Neb. Rev. Stat. §§ 84-712 through 84-712.09), but do not have authority over Village policies or the implementation thereof. As such, we will not discuss this portion of your complaint.

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FACTS

Our understanding of the facts in this case is based upon your correspondence and the response of the Board. Your complaint alleges that you were not placed on the Board's agenda to respond to statements made by the Board Chairman regarding the fire department, which you believe is in violation of the Open Meetings Act. The Board responded by stating that you did not follow the Board's procedure to request to be placed on the agenda and that the Board had concerns that placing your item on the agenda would, itself, violate the Open Meetings Act.

ANALYSIS

You complain that you were not placed on the agenda for the Board's meeting on January 13, 2016. You state that you sought to have an agenda item added to the Board's agenda at this meeting to address claims allegedly being made that the Sutherland Fire Department refused to respond to emergency calls made from the Sutherland Care Center. Neb. Rev. Stat. § 84-1412 provides that the public has the right to attend and speak at meetings of public bodies. A member of the public would include any person who does not sit on the Board, even those who serve as village officials, including yourself as fire chief. A public body may "make and enforce reasonable rules" as to public participation, including a requirement that the public may address the Board only during a specially designated "public comment" time during the meeting. "A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings." § 84-1412(2).

Through the years, our office has developed a number of guidelines which we believe govern the public's right to speak at open meetings of public bodies. One of those guidelines, applicable here, is that public bodies in Nebraska generally operate as a form of representative democracy. *See Distinctive Printing and Packaging Company v. Cox*, 232 Neb. 846, 443 N.W.2d 566 (1989); *State ex rel. Strange v. School District of Nebraska* City, 150 Neb. 109, 33 N.W.2d 358 (1948). That is, Nebraska citizens elect individuals to represent them on various boards, commissions, etc., rather than having all who are present at a particular meeting of a public body act as members of that body. Therefore, when members of the public attend meetings of public bodies in Nebraska, even those attending in their official capacities, they most often attend as observers, *not members of the body itself,* and they have no right, apart from periods set aside for public comment, to engage in the body's debate, to question members of the body, to comment on particular decisions, or to vote on the issues at hand. Those latter rights go to the members of the public body, who ran for and were elected to office. While any particular public body may certainly choose to allow citizens to participate in its meetings, citizens attending a meeting of a particular public body are not members of that body.

In addition, there is no absolute right for members of the public to address a public body at any given meeting or on any given agenda item, so long as there is some time at some meetings set aside for public comment. Public bodies can rightfully refuse to allow public comment at a given meeting, or as they consider a particular agenda item. Furthermore, public bodies may not require that the name of any member of the public be placed on the agenda prior to a meeting in order for that person to speak about items on the agenda at that meeting. Neb. Rev. Stat. § 84-1412(3). However, § 84-1412(3) does not appear to apply to discussion, by members of the public, of items *not already* on the agenda. Under the latter circumstances, where individuals wish to speak about items not already on the agenda, it appears that public bodies may require that those persons seek to be placed on the agenda prior to the meeting in which they wish to speak. Reasonable rules may be enforced by the public body as to how a member of the public may request to be on the agenda, and whether that request is approved. A public body is not required to allow any member of the public, including Village officials, to be placed on an agenda.

The Board represents to us that it has a process by which members of the public may request an item be placed on the Board's agenda. A form is filled out and submitted to the Village Clerk, who provides it to the Board which may then approve or deny the request. The Board states that while you sent an email requesting a specific agenda item be added, you did not fill out the necessary form to be placed on the agenda for the January 13, 2016 meeting. The Board also states that even if you had filled out the proper form, it believes that your agenda item would have violated the Open Meetings Act, as it would have required the public to review past agendas and minutes from Board meetings to understand the issue you requested be discussed. We believe that an agenda item could have been crafted by the Board in drafting its agenda to remedy this concern, and that the Board's suggestion that your agenda item would constitute a violation of the Act to be completely without merit. Additionally, you did speak at that meeting, as part of your report as Fire Chief, but chose not to speak as to the allegations that the fire department was refusing to respond to calls made from the Sutherland Care Center. In any event, as the formation of an agenda is within the purview of the Board, we do not believe that the Board has violated the Open Meetings Act as to your complaint.

CONCLUSION

For the reasons stated above, we do not believe that the Board has violated the Open Meetings Act and no further action is necessary by this office. If you disagree with the analysis we have set out above, you may wish to contact your private attorney to determine what additional remedies, if any, are available to you under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON
Attorney General

Natalee J. Hart
Assistant Attorney General

cc: Jim Bliss, Board Chairman
Rory Roundtree, Esq.

06-622-29