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July 5, 2022

Via email at [REDACTED]

Rick Fulton
[REDACTED]

RE: *File No. 21-M-143; Omaha Public Library Board of Trustees; Rick Fulton, Complainant*

Dear Mr. Fulton:

This letter is in response to your complaint alleging violations of the Nebraska Open Meetings Act (“Act”), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Supp. 2021), amended 2022 Neb. Laws LBs 742, 908 and 922, by the Omaha Public Library Board of Trustees (“Board”). In accordance with our normal procedure with respect to such complaints, we sent a copy of your complaint to Board President Mike Kennedy and requested a response. On December 2, 2021, we received a response to your complaint from Deputy City Attorney, Michelle Peters, who represents the Board. We have completed our review of your complaint, and our findings and conclusion are set out below.

BACKGROUND AND ALLEGATIONS

You indicate that as a result of a public records request by the Omaha World-Herald, the newspaper published certain email exchanges concerning a deal between the Board, Omaha Mayor Jean Stothert, and individuals wanting the land beneath the downtown library. You indicate that further dissemination of these email exchanges occurred when “somebody inside the library” posted them on Twitter. You have requested that this office “look into” the Board and the mayor’s office¹ to determine whether “they have been meeting in private to make a deal.” You state that you “strongly suspect that behind the scenes the [Board] has been meeting to hash out a deal with developers that want the city of Omaha-owned land beneath the library downtown.”

¹ To be clear, the mayor’s office is not a “public body” subject to the Act. See Neb. Rev. Stat. § 84-1409(1)(a).

On November 17, 2021, you contacted the Board's executive secretary to inquire whether a discussion of the "rumored" sale was on the Board's agenda for its November 18 meeting because "[n]othing was on the agenda like that." You indicate that shortly after your contact, you received an email indicating that the item would be added. You state that the agenda was in fact amended.

By way of background, Ms. Peters informs us that on November 23, 2021, Mayor Stothert held a press conference² at which she announced that the downtown library would be closing pending approval by the Board and the Omaha City Council. The closure was in accordance with "strategic master plans done by independent consultants in 2010 and 2017," and that those plans are public records. The mayor also announced plans to open a new downtown library and relocate the Omaha Public Library's central distribution center and administrative offices. Ms. Peters states that the City of Omaha owns the downtown library and land, and any redevelopment on that property will be made by the city, not the Board. She states that while "the Board does have a role in approving such sale or change in branch location," those decisions had not been made at that time. Ms. Peters points out that the mayor announced at her press conference that she would seek the Board's approvals once decisions had been made.

To the extent you allege that the Board violated the Act by meeting privately to broker a deal, Ms. Peters states that you "ha[ve] not made any justifiable allegation that the Board has violated the Act. [Your] allegations are steeped in rumor and inuendo and they are not based on any facts." Ms. Peters further states that "[t]he Board, neither as a group nor individually, have been involved in any negotiations relating to the relocation or the lease(s) of the new library locations," and that the Board was first advised of the proposed leases during an executive session on November 18.

With respect to the Board amending its agenda on November 17, Ms. Peters informs us that the added agenda item "was a resolution for the Board to lend its support to working with Heritage Services." It had nothing to do with the sale of the library. Ms. Peters provided us a copy of the amended agenda for the November 18 meeting, which shows that the agenda was amended at 11:00 a.m. on November 17.

DISCUSSION

Through the Act, "the Legislature has declared that 'the formation of public policy is public business and may not be conducted in secret.'" *Schauer v. Grooms*, 280 Neb. 426, 442, 786 N.W.2d 909, 923 (2010). Its intent "is thus to ensure that the formation of public policy is public business, not conducted in secret, and to allow citizens to exercise their democratic privilege of attending and speaking at meetings of public bodies." *Id.*

² Mr. Kennedy and two other Board members also attended the November 23, 2021, press conference.

Your complaint raises concerns that the Board and mayor's office met privately to strike a deal regarding the sale of the downtown library. You "strongly suspect" that private meetings occurred, and have asked us to look into it. Ms. Peters, on the other hand, emphatically denies that any private meetings took place. She further states you have made no "justifiable allegation that the Board has violated the Act" and that your allegations are not based on any facts. We agree. You have provided no basis for us to inquire further into this matter. Moreover, "absent contrary evidence, public officers are presumed to faithfully perform their official duties." *Thomas v. Peterson*, 307 Neb. 89, 98, 948 N.W.2d 698, 706 (2020).

The Act requires "[e]ach public body [to] give reasonable advance publicized notice of the time and place of each meeting Such notice shall be transmitted to all members of the public body and to the public." Neb. Rev. Stat. § 84-1411(1)(a). The Act further provides:

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. . . . Except for items of an emergency nature, the agenda shall not be altered later than (i) *twenty-four hours before the scheduled commencement of the meeting* or (ii) 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. . . .

Neb. Rev. Stat. § 84-1411(1)(e) (emphasis added).

The agenda was amended at 11:00 a.m. on November 17, and the meeting was held the next day at 5:00 p.m. The Board's agenda was amended more than twenty-four hours in advance of its scheduled meeting. Thus, we find no violation of § 84-1411(1)(e). However, to the extent you believe the added agenda item somehow supports your allegation about private meetings and secret deals, we find no merit to this assertion. The agenda item was a proposed resolution for the Board "to lend its support to working jointly with Heritage Services, the City of Omaha, and other community stakeholders to create a plan for enhancing existing and creating new public library spaces and programming for the benefit of all citizens of Omaha."³ As indicated by the plain language of the resolution, and confirmed by Ms. Peters, the agenda item had nothing to do with the sale of the library.

³ The agenda for the November 18, 2021, Board meeting may be found at <https://d1h8i40bcgby0l.cloudfront.net/opl-website-pdf-storage/board-of-trustees/2021/2021-11-18m.pdf>.

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CONCLUSION

Based on the foregoing, we find no violation of the Act relating to the matters raised in your complaint. Since no further action will be taken by this office with respect to this matter, we are closing our file. If you disagree with our analysis, you may wish to consult with your private attorney to determine what additional remedies, if any, may be available to you under the Open Meetings Act.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Michelle Peters
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