



STATE OF NEBRASKA
Office of the Attorney General

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October 18, 2022

Via email at [REDACTED]
Mark Koch

RE: *File Nos. 22-M-138 and 22-M-144; City of Sargent Health Board; Mark Koch, Complainant*

Dear Mr. Koch:

This letter is in response to several complaints submitted by you on July 12, 2022 and August 23, 2022. This letter will address your allegations of 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 members of the City of Sargent Health Board ("Board") at meetings held on July 11, 2022 and August 8, 2022. In accordance with our normal procedure with respect to such complaints, we sent a copy of your complaint materials to the Board for a response. On September 22, 2022, we received a response from City Clerk Gwenda Horky. This letter will also respond to your October 3, 2022 request that our office file a lawsuit against the City of Sargent under the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2020, Supp. 2021), amended 2022 Neb. Laws LBs 876 and 1246. We have now completed our review of your complaints and request, and our findings and conclusion are set out below.

DISCUSSION

1. Open Meetings Act Complaints

In your first complaint, you allege that, prior to the start of the Board's July 11, 2022 meeting, Police Chief and Board member JD Keefe told you not to video him and that, after he sat down, he stated "you don't have a permit to attend the meeting." It is not clear whether you allege that the second statement was made before or during the

meeting. The Board concedes that Mr. Keefe asked you to stop recording him before the start of the meeting but denies that you were told that you needed a permit to attend the meeting. Members of the public have the right, subject to reasonable rules and regulations set by the Board, to attend and record Board meetings. Neb. Rev. Stat. § 84-1412(1) & (2). It is not clear from your complaint whether you were prevented from attending or recording the full meeting. For this reason, we do not have sufficient information to determine whether the Act was violated.

Second, you allege that the agenda for the Board's August 8, 2022 meeting was amended less than 24 hours before the meeting. You have provided this office a copy of the agenda you received from the Sargent City Office at 10:57 a.m. on August 8, 2022. This agenda included a business item labeled "Approval & Discussion of Conditions of Property at 502 W Main Street." You allege that at the 6 p.m. Board meeting that same day an agenda was made available to the public, which included "several additional pages" and a list of additional properties. While you state that a second property of yours, i.e., 806 West Edith, was mentioned by a Board member during the meeting, you do not allege that this second property was taken up as a business item or that any action was taken with respect to this property. Neither the agenda nor these additional pages available at the meeting were provided to this office.

In its response, the Board explained that the agenda for each Board meeting is finalized at 1:00 p.m. on the Friday before the Monday meeting and that you were given a copy of the finalized agenda on the morning of August 8, 2022. However, the Board further explained that, in addition to the agenda, it maintains and uses a "script" to guide its meetings. The script includes statements that the mayor will make to open the meeting, procedural prompts, and a list of properties about which the Board has received complaints. The Board indicated that the script is not usually finalized until 4:00 p.m., two hours before the start of the 6 p.m. meeting. This script and a copy of the minutes from the previous meeting are made available to the public at each Board meeting.

The Act requires that agenda items "be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting." Neb. Rev. Stat. § 84-1411(1)(e). A member of the public should not be required to obtain additional documents underlying the agenda to determine what is actually on the agenda. *Hansmeyer v. Nebraska Public Power District*, 6 Neb. App. 889, 587 N.W.2d 467 (1998). The agenda "shall not be altered later than (i) twenty-four hours before the scheduled commencement of the meeting." *Id.* According to the Board, you requested and received the final agenda, which contained an item about your property at 502 W Main Street. We find that this item is sufficiently descriptive to give the public reasonable notice that the condition of 502 W Main Street will be discussed and a vote relating to that property may be taken during the meeting. As noted above, this office has not been provided a copy of the agenda or script you allege contained the additional properties. However, from the description given by the Board, it is likely that the list of additional properties you describe was a part of the script, not an addition to the agenda you received in the morning on August 8. In any

event, you have not alleged that properties not listed on the agenda were addressed as business items or voted on by the Board at its August 8 meeting. For this reason, we are unable to conclude that the agenda was insufficient or that a violation of the Act occurred.

Nonetheless, we will remind the Board, through a copy of this letter, that while we take no issue with the use of a script for procedural prompts or to keep track of a list of nuisance properties, the script cannot be used to add detail to agenda items. It would be a violation of the Act for the Board to take up an issue related to a property not identified in the agenda even though that property may be listed in the script. All agenda item details, such as a list of properties to be voted on, should be listed in the agenda itself. The agenda item details should be finalized at least twenty-four hours before the start of the meeting.

2. Nebraska Public Records Request

You submitted the following request to our office via email on October 3, 2022:

I have filed a complaint with your office on the refusal of the Sargent city clerk to allow the citizens right [sic] to view and copy public records (a signed copy of ordinance 525) during normal business hours. Please according to the Nebraska Freedom of information act file a suit to require the custodian of the city of Sargent public records to provide the records during regular business hours to the requesting party.

Your email was accompanied by an attached cell phone video. No explanation of what is depicted in the video was provided. Without a sufficient explanation, it is difficult to determine the facts underlying your complaint. The video appears to depict a person, presumably you, entering the City of Sargent Offices and asking for copy of an ordinance. A woman behind the counter appears to give you an unsigned copy of the ordinance. You then tell her that you want a signed copy of the same ordinance. The woman informs you that, while she cannot locate a signed copy at the moment, one will be provided to you at a later date.

The NPRS provide that the person seeking public records must submit a written request to the custodian of such records. Neb. Rev. Stat. § 84-712(4). A custodian's duty to respond under the NPRS is not triggered by a verbal request. Additionally, a records custodian is not required to interrupt his or her work to immediately respond to a written request. Instead, the NPRS provide that, upon receipt of a written request, the custodian has four business days in which to respond by either providing the records, providing a written denial of the request, or delaying production of the requested records. *Id.* Because you did not submit a written request for a copy of the ordinance, the City had no legal obligation to respond to your request. Thus, we find no violation of the NPRS.

CONCLUSION

For the reasons stated above, we are unable to conclude that the agenda was modified less than twenty-four hours before the meeting or that your right to attend and record a meeting was violated. We will, however, remind the Board that the agenda, and not the script, must contain sufficient detail to give the public reasonable notice of the matters to be considered at the meeting and that those details may not be amended less than twenty-four hours before the meeting. Since we have identified no violation of the NPRS by city officials, we will decline your request to file a lawsuit against the City of Sargent. We do not believe that further action by this office is appropriate and we are closing this file. If you disagree with our analysis, you have the option to contact the county attorney, who has concurrent enforcement authority under the Act. You may also wish to contact your private attorney to determine what additional remedies, if any, may be available to you under the Act.

Finally, we note that you have submitted a high volume of complaints in recent months. Our office takes our responsibility to enforce both the Nebraska Open Meetings Act and the Nebraska Public Records Statutes seriously. To make the most efficient use of our limited resources, we may not be able to provide disposition letters in response to each of your future complaints. Going forward, in those instances where a complaint lacks sufficient factual detail or explanation to suggest that a violation has occurred, this office will respond with a notice indicating that the complaint has been reviewed and no violation has been identified. We will, of course, continue to respond appropriately when there is evidence of a violation.

DOUGLAS J. PETERSON
Sincerely,
Attorney General



Elizabeth O. Gau
Assistant Attorney General