



STATE OF NEBRASKA  
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August 1, 2023

Via email at [REDACTED]  
Jim Boucher



RE: *Open Meetings Act Complaint Against the Valley City Council*  
File No. 20231108

Dear Mr. Boucher:

This letter is in response to your correspondence emailed to our office on July 27, 2023, in which you allege violations of the Open Meetings Act (“Act”), Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2022), by the Valley City Council (“Council”). Your complaint involves the Council’s general policy relating to public comment and the recent denial<sup>1</sup> of your requests to speak for five minutes and ask questions of “participants” during agenda item no. 6 at the Council’s July 25, 2023, meeting. You state that “I believe City’s July 25, 2023 response, and the data from the previous two plus years, shows clearly that the City has established a pattern of conduct of our Public Meetings designed to silence Public input and avoid accountability, and has clearly resulted in numerous violations of both the spirit and letter of our Open Meetings Law.”

The Act contains several provisions which deal with the public’s right to speak at open meetings of public bodies, most of which are set out in the following portions of § 84-1412:

(1) Subject to the Open Meetings Act, the public has the right to attend and the right to speak at meetings of public bodies . . . .

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<sup>1</sup> Please note that we received three emails from you to City Clerk Cheryl Eckerman, and no correspondence *from* Ms. Eckerman.

(2) It shall not be a violation of subsection (1) of this section for any public body to make and enforce reasonable rules and regulations regarding the conduct of persons attending, [or] speaking at . . . its meetings. *A body may not be required to allow citizens to speak at each meeting, but it may not forbid public participation at all meetings.*

(3) No public body shall require members of the public to identify themselves as a condition for admission to the meeting nor shall such body require that the name of any member of the public be placed on the agenda prior to such meeting in order to speak about items on the agenda. The body shall require any member of the public desiring to address the body to identify himself or herself, including an address and the name of any organization represented by such person unless the address requirement is waived to protect the security of the individual.

(Emphasis added.)

For your information, 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, 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.

Under the portion of § 84-1412(2) emphasized above, a public body must set aside some time at some of its meetings for members of the public to address it. 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.

Finally, public bodies are authorized under the Act to make and enforce reasonable rules regarding members of the public speaking at public meetings. According to City Attorney Andrea Griffin, in 2012 the Council adopted Resolution 2012-03, which contained rules and regulations governing individuals' conduct at Council meetings. Visitors are invited to speak on agenda items under the "Visitors/Correspondence" section of each Council Meeting. Public comment is limited to three minutes. Anyone wishing to

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request an agenda item be placed on the agenda is asked to complete a "Citizen Agenda Item Request Form." The Council also streams its meetings on Facebook live.

We have reviewed your materials and found nothing to suggest that the Council is violating the Act. As noted above, your participation at a Council meeting is mostly as an observer. You have no individual right to be placed on the agenda or be allowed to question participants and engage in a dialogue. We further find the Council's rule limiting public comment to items on the agenda and to three minutes appears reasonable under the Act.

MIKE HILGERS  
Attorney General



Leslie S. Donley  
Assistant Attorney General

c: Andrea Griffin (via email only)

49-3290-30