



STATE OF NEBRASKA
Office of the Attorney General

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April 13, 2017

Rhonda Hogeland
[REDACTED]

Re: *File No. 16-M-138; Village of Orleans Board of Trustees; Complainant Rhonda Hogeland*

Dear Ms. Hogeland:

This letter is in response to your correspondence in which you requested that this office investigate alleged violations by the Village of Orleans Board of Trustees (the "Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (Reissue 2014; Cum. Supp. 2016). In accordance with our normal procedures, we requested a response from the Board after we received your complaint, and we subsequently received a response from the Board's attorney, Bryan McQuay. Following the Board's response, we made further inquiry of the Village and received follow-up materials and information, including relevant agendas and minutes from October and November 2016, on March 21, 2017. We have now had an opportunity to review your allegations and the Board's response, and our conclusions are set out below.

ALLEGED VIOLATIONS

We have identified the following Open Meetings Act complaints made by you:

1. A quorum of Board members has met outside of a properly called open meeting;
2. The Board may not have given sufficient notice for the October 4, 2016 and November 17, 2016¹ meetings;
3. You believe you should have been provided notice that you would be discussed and terminated at the October 4, 2016 Board meeting; and
4. The Board has not published or made available minutes from meetings held in October and November, 2016.

¹ Your complaint references an October 17, 2016 Board meeting. However, no Village Board meeting was held on October 17, 2016. From the information in your complaint, we believe the meeting you reference was held November 17, 2016.

In its response to your complaints, the Board generally denies any violations of the Open Meetings Act have occurred. It also denies that a quorum of members has met to discuss Village business and assures this office that proper notice has been provided of meetings.

While you have filed two separate complaints, only the above identified items are related to the Open Meetings Act. The remainder, including issues related to whether the Board has violated Neb. Rev. Stat. §§ 17-208, 17-209 and 19-1102, and whether the Board properly advertised or passed a resolution relating to the sale of village property, are outside the purview of this office. This office has no general supervisory authority over governmental subdivisions in Nebraska. Consequently, all of these other matters are outside the enforcement authority of this office and will not be addressed herein.

ANALYSIS

A quorum of Board members meeting outside of open meetings

Your first complaint is that the Board violated the Open Meetings Act by three Board members “meeting” and “gathering” several times outside of a properly convened open meeting. You also state that three Board members were present to sign a meeting notice on October 3 or 4, 2016 and believe this to be a violation of the Open Meetings Act. Over time, our office has consistently taken the position that two things must occur for a public body to hold a meeting that is subject to the requirements of the Open Meetings Act. First, we have indicated that a quorum of a public body must be present to constitute a “meeting.” Second, we believe that a meeting of a public body only occurs if that public body engages in some of the activities set out in the statutory definition of “meeting” found at Neb. Rev. Stat. § 84-1409(2) (2014), i.e., the public body must engage in “briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.” In our view, when both of these elements have been satisfied, a “meeting” of a public body has occurred under the Open Meetings Act.

It is our understanding that the Board is composed of five members, and that a majority of the members constitute a quorum. In other words, a quorum is reached by the attendance of three Board members. While a quorum of Board members has been present at these alleged gatherings and meetings, in order to constitute a “meeting,” these three Board members would also have to be discussing public business or taking any action of the Board at these times. The Board denies that any such activity has taken place. However, we question the necessity of three Board members being present simultaneously to sign a meeting notice; the Open Meetings Act makes no requirement that members of a public body sign a notice of meeting. While three Board members being present simultaneously to sign a meeting notice likely does not rise to the level of taking action of the public body, we would caution the members of the Board from meeting in groups of three or more so as not to give the appearance of

impropriety. Based on the evidence we have been presented in this instance, we do not believe a "meeting" has occurred. Therefore, there is no violation of the Open Meetings Act with respect to this portion of your complaint.

Notice of Meetings

You have made two complaints regarding the posting of notices of meetings. You state that it is "questionable" that the notices for meetings held on October 4, 2016 and November 17, 2016 were posted more than 24 hours prior to the meeting. The Open Meetings Act requires a public body to give "reasonable advance publicized notice of the time and place of each meeting by a method designated by each public body and recorded in its minutes." Neb. Rev. Stat. § 84-1411(1). Your complaints state that it is "questionable" as to when meeting notices were posted. You have provided no evidence that the meetings were not properly noticed. The Board denies any impropriety in the way it has provided notice of meetings. Without specific evidence to the contrary, we will assume the Board has acted in good faith and cannot find that an Open Meetings Act violation has occurred.

October 4, 2016 meeting

You next complain that the Board discussed and terminated you at its October 4, 2016 meeting without notice to you and without inviting you to the meeting. It is not a violation of the Open Meetings Act to not invite members of the public or employees of the public body to any particular meeting, even if they are a topic of conversation. The agenda of the meeting is meant to provide "sufficient notice" to the public of the matters to be discussed at a meeting, which may include personnel of the body. You did not provide the agenda for this meeting, but the copy of the agenda we received from the Board stated "personnel issues" as the only agenda item for this meeting.

While ideally, the notice would have provided a bit more information about which personnel would be discussed and what the topic discussion would be, the notice provided information to the public that the Board would be discussing matters related to the Village personnel. The Open Meetings Act does not require us to judge the eloquence of the notice, only whether members of the public were sufficiently informed as to the topic of the meeting. The Board's agenda would have been more descriptive had they listed "personnel issues related to Village Clerk," however, in this instance, there is no clear violation of the Open Meetings Act.

Based on our analysis, we do not believe there was a clear violation of the Open Meetings Act with respect to the October 4, 2016 Board meeting. However, we will encourage the Board, through a copy of this letter, to ensure that agenda items are more descriptive as to the subject matter the Board will be discussing at its meeting.

Availability of Meeting minutes

Your final complaint is that the Board has not made meeting minutes available for four meetings following the October 4, 2016 meeting. The Open Meetings Act, Neb. Rev. Stat. § 84-1413 states:

(1) Each public body shall keep minutes of all meetings showing the time, place, members present and absent, and the substance of all matters discussed.

(5) Minutes shall be written, except as provided in subsection (6) of this section, and available for inspection within ten working days or prior to the next convened meeting, whichever occurs earlier, except that cities of the second class and villages may have an additional ten working days if the employee responsible for writing the minutes is absent due to a serious illness or emergency.

You provided no evidence of the minutes not being made available in the statutorily required timeframe. We requested the minutes from the Village for all meetings held in October and November 2016 and were provided them. Without evidence that you requested minutes and were denied access, we cannot find a violation of the Open Meetings Act with respect to this portion of your complaint.

CONCLUSION

For the reasons stated above, we do not believe that the Board has violated the Open Meetings Act. 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: Bryan S. McQuay