



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
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March 6, 2019

Earleen Jensen


RE: *File No. 18-M-129; Village of Royal Board, Earleen Jensen, Complainant*

Dear Ms. Jensen:

This letter is in response to your correspondence in which you requested that this office investigate alleged violations by the Village of Royal Board (the "Board") of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014 and Cum. Supp. 2018) ("Act"). 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 Village's attorney, Joseph McNally, who responded on behalf of the Board. We have now had an opportunity to review your allegations and the Board's response, and our conclusions are set out below.

ALLEGED VIOLATIONS AND RELEVANT FACTS

Upon review of your complaint, we have identified two alleged violations of the Open Meetings Act, as follows:

1. The Board hiring Village Attorney, Joseph McNally, without first discussing and voting on the matter in an open meeting;
2. The Board hiring Dan McElhaney, to mow town property, without first discussing and voting on the matter in an open meeting.

The remainder of the items you discuss in your complaint will not be addressed in this letter, as they are not Open Meetings related issues. In its response to your complaint, the Board generally denies any violations of the Open Meetings Act have occurred and has provided copies of meeting minutes to support its position.

ANALYSIS

Hiring of Village Attorney, Joseph McNally

Your complaint alleges that the Board hired Mr. McNally without first discussing and voting on the matter in an open meeting. Your complaint alleges that Mr. McNally sent you a letter in which he identified himself as the Village Attorney in July 2018. A review of the meeting minutes provided by you and Mr. McNally reveal that the Board did not discuss this matter at a meeting prior to July 2018. Neb. Rev. Stat. § 84-1408 (2014) of the Nebraska Open Meetings Act provides:

It is hereby declared to be the policy of this state that the formation of public policy is public business and may not be conducted in secret.

Every meeting of a public body shall be open to the public in order that citizens may exercise their democratic privilege of attending and speaking at meetings of public bodies, except as otherwise provided by the Constitution of Nebraska, federal statutes, and the Open Meetings Act.

The primary purpose of the open meetings laws is to ensure that public policy is formulated at open meetings. *Marks v. Judicial Nominating Comm.*, 236 Neb. 429, 461 N.W.2d 551 (1990). The Nebraska open meetings laws are a statutory commitment to openness in government. *Wasikowski v. Nebraska Quality Jobs Board*, 264 Neb. 403, 648 N.W.2d 756 (2002); *Grein v. Board of Education of the School District of Fremont*, 216 Neb. 158, 343 N.W.2d 718 (1984).

The hiring of a Village Attorney is public business that should be discussed in an open meeting. The minutes we have been provided do not indicate that the Board discussed or voted on retaining Mr. McNally as counsel prior to July 2018. However, while the Board appears to have violated the Act by retaining Mr. McNally as counsel in July 2018, any violation was cured at the October 1, 2018 meeting. A review of the October 1, 2018 minutes, provided by Mr. McNally, show that the Board voted to retain Mr. McNally as the Village Attorney on an as needed basis at the meeting. *Pokorny v. City of Schuyler*, 202 Neb. 334, 275 N.W.2d 281 (1979) (defects in the proceedings of a governmental body may be cured by new proceedings commencing at point where defect occurred). As such, the Board cured any defect which may have occurred prior to July 2018.

Hiring of Dan McElhaney

Your next allegation is that the Board hired Dan McElhaney without first discussing and voting on the matter in an open meeting. This claim is refuted by the April 2, 2018 meeting minutes. The minutes show that the Board voted to hire

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Mr. McElhaney for mowing services at the April 2018 meeting. As such, we find the Board did not violate the Open Meetings Act regarding this portion of your complaint.

CONCLUSION

For the reasons stated above, based on the information provided, it appears the Board violated the Act with respect to your first allegation, however, any violation was cured at the October 1, 2018 meeting. We do not believe that the Board violated the Act with regard to your second allegation. 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



Laura A. Nigro
Assistant Attorney General

cc: Joseph McNally

35-051-29