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December 1, 2021

Gary Aldridge
[REDACTED]

RE: *File No. 21-M-118; Lower Platte South Natural Resources District; Gary Aldridge, Complainant*

Dear Mr. Aldridge:

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), by members of the Lower Platte South Natural Resources District Board ("Board") at a meeting held on April 21, 2021. 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 July 22, 2021, we received a response to your complaint on behalf of the Board from attorney Corey Wasserburger. We have now completed our review of your complaint, and our findings and conclusion are set out below.

FACTS

Our understanding of the facts in this case is based upon your complaint, the documentation you provided this office, and the information we received from the Board.

The Board conducted a meeting on April 21, 2021 via videoconference. During a portion of the meeting, Director Ron Nolte experienced a technical issue which caused others on the videoconference to not be able to hear him. While Director Nolte could not be heard during this period of the meeting, he could be seen. While he was experiencing the technical difficulty, Director Nolte indicated his vote on several motions by visual means, specifically by signaling a thumbs up to indicate a yes vote when his name was called. Each of Director Nolte's votes were recorded individually in the minutes for this meeting. The minutes of the meeting were approved by the Board at its May meeting.

During its July 21, 2021 meeting, the Board revoted aloud on and passed each motion for which Director Nolte voted by hand signal at the April 21, 2021 meeting. During these votes, each director stated his or her vote aloud.

ALLEGED VIOLATION

You assert that the Act requires roll call votes to be made verbally and allege that the Board's acceptance of Director Nolte's use of a hand signal to register his vote during the April 21, 2021 meeting did not comply with Neb. Rev. Stat. § 84-1413(2) (Cum. Supp. 2021).

DISCUSSION

The Act is a statutory commitment to openness in government. *Wasikowski v. Nebraska Quality Jobs Board*, 264 Neb. 403, 648 N.W.2d 756 (2002). "The purpose of the open meeting law is to insure that public policy is formulated at open meetings of the bodies to which the law is applicable." *Pokorny v. City of Schuyler*, 202 Neb. 334, 339, 275 N.W.2d 281, 284 (1979). The open meetings laws should be broadly interpreted and liberally construed to obtain their objective of openness in favor of the public. *State ex rel. Upper Republican NRD v. District Judges*, 273 Neb. 148, 728 N.W.2d 275 (2007).

The Act provides that "[a]ny action taken on any question or motion duly moved and seconded shall be by roll call vote of the public body in open session, and the records shall state how each member voted or if the member was absent or not voting." Neb. Rev. Stat. § 84-1413(2). The Board's subsequent votes on the contested motions at its July 22, 2021 meeting clearly complied with this section of the Act. The subsequent votes, where each director stated his or her vote aloud, cured any purported defects alleged in your complaint. *Pokorny v. City of Schuyler*, 202 Neb. 334, 341, 245 N.W.2d 281, 285 (1979) ([w]here a defect occurs in proceedings of a governmental body, ordinarily the defect may be cured by new proceedings commencing at the point where the defect occurred.").

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CONCLUSION

For the reasons discussed above, we have determined that any alleged violation has been cured. We have closed this file and plan no further action with respect to your complaint. If you disagree with our analysis, you may wish to contact your private attorney to determine what additional remedies, if any, may be available to you under the Act.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Elizabeth O. Gau
Assistant Attorney General

c: Debora Eagan, Board Chair of the Lower Platte South Natural Resources District

03-004-30