

TRAVERSE CITY  
**RECORD EAGLE**

Received  
MAR 28 2014  
President's Office

March 26, 2014

Mr. Doug Bishop, Chairman, Northwestern Michigan College Board of Trustees

Mr. Tim Nelson, President, Northwestern Michigan College

Re: Michigan Open Meetings Act violations

Gentlemen,

Subsequent to the Northwestern Michigan College Board of Trustees' Jan. 27, 2014 meeting Traverse City Record-Eagle personnel requested through the Michigan Freedom of Information Act public documents from NMC administrators and elected officials.

Public documents obtained in response to the Record-Eagle's original Jan. 28, 2014 FOIA requests and follow-up requests by Record-Eagle Executive Editor Mike Tyree conclusively showed members of Northwestern Michigan College's elected Board of Trustees engaged in repeated violations of Michigan's Open Meetings Act.

Specifically, it is clear NMC Board members violated the state OMA on multiple occasions between Jan. 20, 2014 and Jan. 27, 2014, as evidenced by board members' email and telephone discussions and deliberations regarding a proposal to televise NMC meetings, the documents obtained through FOIA show.

By law, those communications regarding televised meetings should have occurred only in public meetings.

As the Michigan Attorney General has noted:

The OMA was enacted to promote governmental accountability and to foster openness in government as a means of enhancing responsible decision making. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 222, 223; 507 NW2d 422 (1993). To that end, the OMA requires that the deliberation and formulation of public policy and decisions effectuating public policy be conducted at open meetings. Under the OMA, a public body's decision-making process is subject to public scrutiny and accountability. *Esperance v Chesterfield Twp*, 89 Mich App 456, 463; 280 NW2d 559 (1979), quoting *Wexford County Prosecutor v Pranger*, 83 Mich App 197; 268 NW2d 344 (1978). A process that denies citizens the important opportunity to observe the deliberations of a member of public body toward the decision and the formulation of that decision violates the OMA.

Attorney General Opinion # 7227 (2009). NMC cannot avoid the OMA by having a "consensus building process" that equates to decision-making. The Michigan Attorney General provides an excellent example that certainly applies here:

For example, where board members use telephone calls or sub-quorum meetings to achieve the same intercommunication that could have been achieved in a full board or commission meeting, the members' conduct is susceptible to "round-the-horn" decision-making, which achieves the same effect as if the entire board had met publicly and formally cast its votes. A "round-the-horn" process violates the OMA.

Michigan Attorney General Open Meetings Act Handbook, p. 7.



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The emails provided by NMC demonstrate that NMC officials violated the OMA.

#### **Jan. 21, 2014 Policy Committee Meeting**

The Policy Committee conducted an open meeting on Jan. 21, 2014, and stated that it recommended that NMC not videotape, televise or otherwise keep an electronic record of NMC Board meetings. That meeting was videotaped by a Record-Eagle reporter.

The Policy Committee also stated at that meeting that: (1) it could reconsider its position if there were a demonstrated need in the future; and (2) that the Committee's position likely would be presented to the full Board of Trustees meeting on Jan. 27.

It is patently clear that a quorum of the Policy Committee deliberated on the recording issue in advance of the Jan. 21 meeting. Indeed, the emails demonstrate both an explicit desire to limit what was said at the open meeting, as well as a deliberate attempt to deliberate and reach an agreement in advance of the open meetings so as not give "any advance notice beyond what is minimally necessary." Moreover, there was a specific intent to meet in advance of the open meeting and "iron out any wrinkles or differences" before the open meeting.

#### **Jan. 27, 2014 Board of Trustees Meeting**

The Policy Committee apparently did not submit a recommendation to the Board on Jan. 27, 2014, although a number of emails referenced the fact that the Policy Committee would be making such a recommendation at the Board meeting. Instead, a Board member made a motion to allow (limited) recording.

Thus, despite the fact that the NMC Policy Committee stated on Jan. 21 that its recommendation was that NMC not videotape, televise or otherwise keep an electronic record of NMC Board meetings, the Board adopted a policy to begin limited electronic recordings of their meetings.

This decision was taken without any public deliberations on the issue of not recording at all; rather the discussion went to timing issues. Moreover, the Board deliberated on this action in advance of the Jan. 27 meeting (though not at a public meeting). It is clear that there were such non-public deliberations for at least several reasons. First, the Policy Committee did not present a recommendation to the Board at the Jan. 27 meeting. Second, during the Jan. 27 meeting, the Board chair stated publicly that an absent member agreed with the motion, which means that Board members discussed the action in advance of the meeting. Third, emails produced in response to the Record-Eagle's FOIA request establish that Board members were having conversations among themselves with the Board as a whole and with the Policy Committee with respect to the recording issue. Moreover, the communications suggest that here again, there was an effort to reach an agreement on how the Board would decide the recording issue in advance of the Board meeting.

In short, on multiple occasions, deliberations and decisions took place outside any public meeting as required by the OMA. The formal votes of the board in open session were, practically speaking, a "fait accompli" by the time that the vote was conducted. This violates the OMA. *People v. Whitney*, 228 Mich. App. 230 (1998) and *Booth Newspapers, Inc. v. University of Michigan Board of Regents*, 444 Mich. 211 (1993). In addition, the OMA provides for criminal penalties for those who intentionally violate the OMA. MCL § 15.272(1). The emails demonstrate there was a deliberate intent – by at least some members of the board – to both deliberate and reach a decision on the videotaping issue outside of an open meeting.

State law affords the Record-Eagle multiple options to address NMC elected officials' repeated violations of OMA. The Record-Eagle may file a criminal complaint with the Grand Traverse

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County prosecutor and/or file suit in 13th Circuit Court, or do so in another circuit court in our circulation area.

Alternately, the Record-Eagle offers the following opportunity to NMC's elected officials and administrators:

- 1) NMC's elected officials would acknowledge during a public meeting their violations of OMA, an acknowledgement that would meet with Record-Eagle approval prior to its publication;
- 2) NMC's elected officials and administration would draft and approve a policy that requires their adherence to the OMA and FOIA laws, and do so with specificity that would include, but not be limited to, policy language that expressly prohibits elected officials' email, telephone or other non-public meeting deliberation of or discussion on public business;
- 3) NMC's administrators and all NMC elected officials must agree to receive training from a recognized expert on state FOIA and OMA laws as to NMC officials' legal responsibilities and obligations under those laws. That training must occur within a reasonable time and either occur in a public meeting or be documented in minutes of a closed session, if the training occurs in such a setting.

Separate from the above-mentioned alternative to civil or criminal action, the Record-Eagle also demands the immediate resignation of NMC Board Chair Doug Bishop from that post.

We look forward to your response no later than April 2, 2014.

Sincerely,



Neal Ronquist

Publisher, Traverse City Record-Eagle



Mike Tyree

Executive Editor, Traverse City Record-Eagle