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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

3014 West Charleston Boulevard, Suite 150
Carson City, Nevada 89102

October 5, 2020

Via U.S. Mail and Electronic Mail

Dale Hartley



**Re: Open Meeting Law Complaint – McDermitt Fire
Protection District Meeting Minutes, OAG File No. 13897-
356**

Dear Mr. Hartley:

The Office of the Attorney General (OAG) is in receipt of your complaint (Complaint) alleging violations of the Open Meeting Law (OML) by the McDermitt Fire Protection District regarding the alleged failure to provide you with the meeting minutes associated with the April and June 2019 agendas, among other things. This letter will address all allegations in this Complaint related to the OML.¹

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (NRS) 241.037; NRS 241.039; NRS 241.040.

¹ Much of the Complaint regarded alleged actions or inactions on the part of MFPD board members suggesting that these too, were violations of the OML. We disagree and find that these several matters were outside this office's jurisdiction of the OML. You allege that board members William Donalson and George "Hank" Kirshner appointed themselves to the positions of president/secretary and district fire chief, respectively, without a vote as required by NRS 474.150 and NRS 474.163. The selection and election of members of the MFPD is a county matter and based on the facts alleged, does not rise to the level of an OML violation. Next, you allege that board members Donalson and Kirshner are not communicating with you regarding payment of vouchers in "violation of NV Taxation dept rules and Budget office rules." You then allege that the board members failed to inform you of 911 calls, or the filing of incident reports with the Fire Marshall's Office. Each of these activities fall outside this office's jurisdiction and will not be addressed in this letter.

FACTUAL BACKGROUND

The McDermitt Fire Protection District (MFPD) is the governing board for the fire district in McDermitt, Nevada. MFPD is a “public body” as defined in NRS 241.015(4) and is subject to the OML. The Complaint alleges the following:

1. In April 2019, MFPD board member William Donalson posted an agenda with no meeting minutes. When you requested Mr. Donalson provide the minutes you received no reply.
2. Again, in June 2019, MFPD board member Donalson posted an agenda with no meeting minutes and again when you inquired about the minutes, you received no reply.
3. Finally, board member Donalson has not included items you have requested on the MFPD agendas.

In response to an inquiry from this office, I have spoken at length with you, and have had numerous communications with Humboldt County Deputy District Attorney Wendy Maddox. I have left messages with Mr. Donalson and Mr. Kirshner but have not received any response from either. Since the filing of your Complaint, board member Donalson has stepped down from his roles on the MFPD and you have taken his place on the board. With your transition to the board, you have since received copies of the minutes that you requested in the Complaint and have stated that the matter can be closed with no further action.

DISCUSSION AND LEGAL ANALYSIS

The Complaint alleges two specific OML violations: (i) board member Donalson’s failure to provide minutes in conjunction with the April and June 2019 agendas, and (ii) board member Donalson’s decision to not include items you requested on upcoming MFPD agendas.

Regarding the first allegation: Minutes or audio recordings of public meetings are declared by the Open Meeting Law to be public records and must be available for inspection by the public within 30 working days after the meeting is adjourned. *See* NRS 241.035(2) and OMLO 99-06 (March 19, 1999).

In the case of a public body that meets infrequently, formal approval of the minutes of a previous meeting may be delayed several months. **NRS 241.035(1) states that unless good cause is shown, a public body shall approve the minutes of a meeting within 45 days after the meeting or at the next meeting of the public body, whichever occurs later.** The unapproved minutes must be made available within the time specified in NRS 241.035(2) to any person who requests them, together with a written statement that such minutes have not yet been approved and are subject to revision at the next meeting.

Here, the MFPD board meets infrequently, so good cause exists for the board to approve minutes within 45 days after the meeting or at the next meeting of the MFPD. Notwithstanding this rule, the April minutes should still have been provided by the June meeting. And the June meeting minutes should still have been provided by the next held board meeting. The failure to provide minutes by the next MFPD meeting is a violation of NRS 241.035(2).

In resolution of this matter, you have stated to me that you have replaced Mr. Donalson as president and secretary on the MFPD board and are now in possession of the previously requested minutes. As such, you state that the matter can now be closed. No further action will be taken by this office regarding the requested minutes.

Finally, you allege that board member Donalson failed to include items you requested on upcoming agendas. Other than periods devoted to comments by the public, the OML is silent with respect to which items are included on agendas and how agenda items are chosen. Thus, failure to include a requested agenda item is not a violation of the OML.

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CONCLUSION

Upon review of your Complaint and available evidence and discussions with you in this matter, the OAG will not be issuing findings of fact and conclusions of law. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

/s/ GORDON R. GOOLSBY
Gordon R. Goolsby
Senior Deputy Attorney General