

AARON D. FORD
Attorney General

CRAIG NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

January 16, 2023

Via U.S. Mail

Timothy Hipp



**Re: Open Meeting Law Complaint, OAG File No. 13897-419
In the matter of Esmeralda County Board of Commissioners**

Dear Mr. Hipp:

The Office of the Attorney General (“OAG”) is in receipt of your Complaint (“Complaint”) alleging violations of the Open Meeting Law (“OML”) by the Esmeralda County Board of Commissioners (“Board”). Your Complaint alleges that the Board violated NRS 241.033 at its June 15, 2021 meeting by failing to provide you timely personal notice that your character, alleged misconduct, professional competence or physical or mental health would be considered.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. To investigate your Complaint, the OAG reviewed the following: the Complaint and attachments; the Board’s meeting agenda; the audio recording of the Board’s June 15, 2021 meeting; and the Board’s response to the Complaint (“Response”) and attachments.

After investigating the Complaint, the OAG determines that the Board did not violate the OML because the discussion did not rise to the level of consideration of your character, alleged misconduct, professional competence or health, requiring notice under NRS 241.033.

FACTUAL BACKGROUND

On June 15, 2021, the Esmeralda County Board of Commissioners held an open public meeting. The meeting agenda included the following enumerated topics:

Item 13: “Regarding the moving of the Nuke Repository Conex building without approval, and who approved the use of the Road Equipment and Maintenance personnel to facilitate moving of the Conex. Also, what has happened to the Nuke repository office equipment? Is there any damage to the building and equipment? (Commissioner Winsor).”

Item 14: “Why was an ex-contracted employee and a non-county personnel involved in the movement of a county building? The ex-contracted employee has not had a valid contract with the county since 2001, yet was driving county equipment. (Vera Boyer).”

Item 15: “Explanation on why the Conex building work order was stopped when there was an understanding it could possibly be used for elections storage, training and testing (pre-lat). (LaCinda Elgan).”

Item 16: “Decide where election equipment can be stored and secured, but have the necessary accessibility to the computers and equipment for training and pre-lat functions. (LaCinda Elgan).”

Your Complaint alleges that during the meeting, there were three agenda items in response to you moving a shipping container containing county election equipment. You allege that these agenda items were used by De Winsor, Vera Boyer, and LaCinda Elgan to discuss your character, misconduct, and competence, and that you did not receive prior written notice pursuant to NRS 241.033.

The Board positioned that these agenda items did not require the personal notice described in NRS 241.033(2) because there was no discussion specific to your character, alleged misconduct, professional competence or physical or mental health at the meeting at issue. Specifically, the Response states that Board Chairman De Winsor did not violate the OML during agenda item 13 because tangential references to a person is not a violation pursuant to NRS 241.033(7)(b). The Response further contends that Esmeralda County Auditor/Recorder Vera Boyer and Clerk/Treasurer LaCinda Elgan did not violate the OML during agenda items 14 and 15 because not a single statement was made about you. Additionally, the Board argues that LaCinda Elgan did not violate the OML during agenda item 16 because tangential references to a person is not a violation.

LEGAL ANALYSIS

The Board did not violate OML because there was no discussion specific to Mr. Hipp's character, alleged misconduct, professional competence or physical or mental health.

As a county commission established under the provisions of NRS Chapter 244, the Board is a public body as defined in NRS 241.015(4) and subject to the OML.

A public body may not hold a meeting to consider the character, alleged misconduct, professional competence or physical or mental health of any person unless the public body has given written notice to that person of the time and place of the meeting and received proof of service of the notice. NRS 241.033. "Character" is defined as "the qualities that combine to make an individual human being distinctive from others, esp. as regards morality and behavior [sic]; the disposition, reputation, or collective traits of a person as they might be gathered from close observation of that person's pattern of behavior." Black's Law Dictionary (11th ed. 2019). "Misconduct" means "a dereliction of duty; unlawful, dishonest, or improper behavior, esp. [sic] by someone in a position of authority or trust." *Id.* "Competence" means "a basic or minimal ability to do something; adequate qualification, esp. [sic] to testify." *Id.*

In determining whether a violation of the notice requirement contained in NRS 241.033 occurred, the OAG reviews the actual discussion during which a public body is alleged to have considered a person's character alleged misconduct, professional competence or physical or mental health. See, OMLO 2011-01 (March 29, 2011); OMLO 99-22 (April 7, 1999). In doing so, the OAG evaluates the substance of the discussion and contextual cues to determine whether the notice requirement applies. *See generally*, OMLO 2005-13 (July 22, 2005).

Here, you allege that Esmeralda County violated the OML by failing to provide you with written notice that your character, alleged misconduct, professional competence, or physical or mental health would be discussed at the Board's June 15, 2021 meeting. The audio recording of the meeting demonstrates that there was no discussion specific to your character, alleged misconduct, professional competence or physical or mental health. Accordingly, the requirement under NRS 241.033 for personal written notice does not apply. As such, the Board did not violate the OML by failing to provide that notice.

CONCLUSION

Upon review of your Complaint and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
ROSALIE BORDELOVE
Chief Deputy Attorney General

cc: Robert E. Glennen III, Esmeralda County District Attorney
P.O. Box 339
Goldfield, NV 89013