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Via First Class Mail

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Re: Open Meeting Law Complaint, A.G. File No. 14-032 against the
Washoe County School District Board of Trustees

BACKGROUND

The Washoe County School District Board of Trustees (Trustees) held a special meeting on November 13, 2014, for the purpose of determining the finalists to fill the District E Trustee vacancy due to the resignation of the incumbent Trustee, David Aiazzi. The Trustees voted by ballot to select 5 finalists from a pool of seventeen applicants. Those five finalists were interviewed in a public meeting on November 18, 2014. Dr. Angela Taylor was selected for the position of trustee after the finalist interviews.

On November 20, 2014 this office received an Open Meeting Law complaint that alleged the November 13, 2014, Agenda Item No. 2.01, a meeting to select finalists for the trustee position, did not include the names of the applicants, or the process by which finalists would be selected. The complaint also alleged that failure to reveal how each trustee voted by ballot was in essence a secret ballot.

FACTS

The names of applicants to be considered did not appear in Agenda Item No. 2.01.¹ However, review of the video of the Trustee's consideration of Item No. 2.01

¹ NOVEMBER 13, 2014 PUBLIC MEETING AGENDA: ITEM 2.01 REVIEW AND DISCUSSION OF THE APPLICATIONS SUBMITTED FOR THE REPLACEMENT FOR TRUSTEE DAVE AIAZZI, BOARD OF TRUSTEES, DISTRICT E ; SELECTION OF CANDIDATES TO BE INTERVIEWED AT THE REGULAR MEETING OF THE BOARD OF TRUSTEES ON NOVEMBER 18, 2014 (FOR POSSIBLE ACTION).

indicated that Trustees, in collaboration with the Washoe County School District (WCSD), provided each of seventeen applicants with five questions to support their application for the open position. Applicants provided his or her résumé in preparation for the special meeting. Counsel Randy Drake (Mr. Drake) explained various options for proceeding with Item 2.01. The selected process would list the names of the seventeen applicants on a ballot to be distributed to each voting Trustee. Each Trustee would privately select five names from the list.

Following the private balloting, Mr. Drake tabulated each Trustee's vote; however, no names were revealed. Trustee Gutierrez asked Mr. Drake if the names of all the applicants would be made public before the end of the meeting, but only the names of the five finalists were disclosed, because counsel said "these records" (ballots) were public and would be identified in the record. The names of 12 applicants were not disclosed during the meeting. The Trustees voted to select five applicants who received the most votes as finalists to be interviewed at a future meeting. Their names were announced during the meeting, but no individual ballots were made public at the meeting.

Our office contacted Mr. Drake, to discuss the agenda items and the failure to list all the names of applicants. Mr. Drake agreed to corrective action in the form of a new agenda item which would clarify for OML purposes the selection already taken of a new trustee. The new item would be published on December 9, 2014 during a regular trustee meeting agenda. Five finalists had already been interviewed during the November 18, 2014 regular trustee meeting and a new trustee had been selected.

Our office viewed clarification as suitable corrective action under NRS 241.0365. Clarification of the selection of finalists would be re-agendized within 30 days. Mr. Drake also agreed to list the names of all applicants under a new agenda item, and he agreed to clarify the balloting process used by the Trustees in the selection of finalists, so that no ballot remained secret during the meeting.² Mr. Drake read aloud

² CLARIFICATION OF AGENDA ITEM 2.01 FROM THE NOVEMBER 13, 2014 SPECIAL MEETING OF THE BOARD OF TRUSTEES TITLED: REVIEW AND DISCUSSION OF APPLICATIONS SUBMITTED FOR THE REPLACEMENT OF TRUSTEE DAVE AIAZZI, BOARD OF TRUSTEES, DISTRICT E; AND, SELECTION OF CANDIDATES TO BE INTERVIEWED AT THE REGULAR MEETING OF THE BOARD OF TRUSTEES ON NOVEMBER 18, 2014 (FOR POSSIBLE ACTION.) THIS CLARIFICATION ITEM SHALL IDENTIFY IN THE AGENDA TITLE EACH APPLICANT FOR THE POSITION AND CLARIFY THE BALLOTING PROCESS USED BY THE BOARD OF TRUSTEES IN THE SELECTION OF FINALISTS. THE APPLICANTS FOR THE REPLACEMENT OF TRUSTEE DAVE AIAZZI, BOARD OF TRUSTEES, DISTRICT E RECEIVED BY THE DISTRICT AND CONSIDERED BY THE BOARD OF TRUSTEES AT THE SPECIAL MEETING OF THE BOARD OF TRUSTEES ON NOVEMBER 13, 2014 WERE FRANK BRITTAIN, RODERIC CARUCCI, KELLIE CROSBY-STURTZ, CYNTHIA GEDDES, BRADY HINES, CODY JOHNSON, CARLOS LEDON, TALLINE MARTINS, TACIE MOESSNER, DIANE NICOLET, PAUL SCHMIDT, COERT SCOGGIN, DARCI SMITH, JEAN STOESS, BRAD SUMMERHILL, ANGELA TAYLOR, AND CAROLYN VALLE. BALLOTING BY THE BOARD OF TRUSTEES AT THE SPECIAL MEETING OF THE BOARD OF TRUSTEES ON NOVEMBER 13, 2014

the clarified agenda item during the December 9, 2014 meeting. He also read aloud each Trustee's ballot from the November 13, 2014 special meeting, which identified which applicants had received individual Trustee's vote. The redrafted agenda item listed all the applicant's names and was published on December 9, 2014 as Agenda Item 3.03, and was posted within the thirty days as required by NRS 241.0365.

CONCLUSIONS OF LAW

The WCSD Trustees failure to include names of candidates on its agenda pursuant to NRS 241.020(2)(d)(5), required corrective action. Individual Trustee ballots should have been disclosed during the meeting on November 13, 2014.

In *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989) the Court construed the phrase "discussion of appointment of any person to public office" (now codified in NRS 241.030(4)(d)) to mean "all consideration, discussion, deliberation, and selection of a public officer or one who serves at the pleasure of a public body." The Court's construction means that any deliberation or consideration of a person's character, alleged misconduct, professional competence or health must be in a public meeting. The balloting process used in the selection of Trustee finalists violated the Court's proscription, because consideration of each person's character and qualifications was secretly arrived at by individual ballots that were not made public.

Trustees' corrective action on December 9, 2014, was satisfactory. Mr. Drake disclosed each Trustee's November 13, 2014 ballot when he read them aloud.

Relevant OML statutes and the legislative intent underlying the OML, supports this Office's view that when ballots are utilized to narrow the applicant pool, the public must be provided with each Trustee's signed ballot, otherwise, the ballots are secret. See Attorney General's Open Meeting Law Manual, § 8.08 (11th ed. 2012).

The Attorney General's Office requires that public bodies list names on the agenda whenever it is considering the appointment of a public officer. For such a significant appointment, we believe it is important to clearly and explicitly inform the public of each applicant's name and the public process that will be used to make the selection.

RESULTED IN THE SELECTION OF THE FOLLOWING FIVE FINALISTS: CARLOS LEDON, DIANE NICOLET, DARCI SMITH, JEAN STOESS AND ANGELA TAYLOR. INTERVIEWS OF THE FIVE FINALISTS WERE SCHEDULED FOR THE REGULAR MEETING OF THE BOARD OF TRUSTEES ON NOVEMBER 18, 2014. (FOR POSSIBLE ACTION)

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Based on the foregoing facts and conclusions of law, we find that WCSD Board of Trustees adequately took corrective action and cured the violations. Therefore, no further action is necessary.

Sincerely,

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