

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3
4 In the Matter of:

5 PAHRUMP COMMUNITY LIBRARY
6 DISTRICT BOARD OF TRUSTEES.
7

A.G. FILE NO.:13897-455

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

8
9 Marcia Peznowski and Christy J. Stevens filed Complaints with the Office of the
10 Attorney General (“OAG”) pursuant to Nevada Revised Statutes (“NRS”) 241.039 alleging
11 violations of the Nevada Open Meeting Law (“OML”) by the Pahrump Community Library
12 District Board of Trustees (“Board”) regarding its August 8, 2022, meeting. The
13 Complaints allege that the Board treated public commenters differently depending on the
14 speaker’s viewpoint by giving speakers Board members didn’t agree with less time to speak,
15 interrupting them and verbally attacking them.

16 The OAG has statutory enforcement powers under the OML and the authority to
17 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040.
18 The OAG’s investigation of the Complaints included a review of the Complaints; the
19 Response on behalf of the Board; and the agenda, minutes and audio recording for the
20 Board’s August 8, 2022, meeting. The OAG finds that the Board violated the OML by
21 applying public comment restrictions based upon viewpoint.

22 **FINDINGS OF FACT**

23 1. The Board held a public meeting on August 8, 2022. The agenda for the meeting
24 listed the following public comment statement:

25 Members of the public who wish to address the Library Board of Trustees may
26 come forward and speak on any topic that is relevant to or within the authority
27 of the Library Board. The Board respects the rights of citizens to present
28 differing opinions and views. The public comment period at library district board
meeting (sic) shall be limited to a maximum of forty-five (45) minutes for both
general public comment items.

1 Remarks by speakers during any public comment period shall be limited to three
2 (3) minutes each. Additionally, public comment of up to three minutes per person
3 may be heard during individual action items. The Chairman reserves the right
4 to reduce the time allowed for public comment. The Chairman may prohibit
5 comment if the content of the comments is a topic that is not relevant to, or within
6 the authority of the Board, or if the content of the comments is willfully
7 disruptive of the meeting by being irrelevant, repetitious, slanderous, offensive,
8 inflammatory, irrational or amounting to personal attacks or interfering with the
rights of other speakers. If you believe your item requires extended discussion
or action, you may ask a member of the Board to place it on the Board's agenda
for a future meeting. No action may be taken on a matter raised under general
public comment of the agenda unless the matter is noticed on a Board agenda as
an item on which action may be taken.

9 2. During the first general public comment period of the meeting, Complainant
10 Stevens began her comments by criticizing the methods of timekeeping for public comment
11 during meetings. Trustee Brian Shoemake, who was keeping time for the meeting,
12 interrupted Ms. Stevens multiple times and argued with her, including stating "Go f**k
13 yourself." Chair John Shewalter cautioned Trustee Shoemake multiple times. Despite the
14 interruptions, Complainant Stevens was permitted to complete her comments.

15 3. Three other public commenters spoke, two in support of Complainant Steven's
16 comments and one disagreeing with her statements and while interrupted by Trustee
17 Shoemake at various times, all were able to complete their comments.

18 4. The two speakers in support of Complainant Steven's comments were met with
19 hostile comments from Trustee Shoemake while the one disagreeing with her was met with
20 favorable comments. The last commenter, Steve Bacus, argued with Trustee Shoemake.
21 Chair Shewalter attempted to quiet Trustee Shoemake and then called for a five-minute
22 recess. Upon returning from recess, Chair Shewalter announced that public comment was
23 closed and moved to the next agenda item.

24 5. The entire first public comment period lasted for about 6 minutes.

25 6. The Board called for additional public comment on most action items, after
26 discussion, but prior to the Board's vote. The only interruptions to commenters during these
27 periods were to ascertain whether the comments were relevant to the particular agenda item.
28 Complainant Stevens offered comments at one of these periods uninterrupted.

1 maintain decorum and order in the proceeding. *Reza v. Pearce*, 806 F.3d 497, 504 (9th Cir.
2 2015).

3 Here, the issues are whether the interruptions to public commenters rose to the level
4 of a public comment restriction and if so, whether that restriction was applied based upon
5 viewpoint. The OAG finds that the Board's interruption of speakers both rose to the level of
6 a public comment restriction and was applied based upon the speakers' identity and
7 viewpoint. *Kindt v. Santa Monica Rent Control Bd.*, 67 F.3d 266, 272 (1995) (a public body
8 may neither place unreasonable restrictions upon speakers nor enforce restrictions in a
9 manner that is not content neutral).

10 Where there is an intent to suppress speech based on viewpoint or identity, the
11 suppression is not viewpoint neutral. *Galena v. Leone*, 638 F.3d 186, 205 (3rd Cir. 2011)
12 (finding no First Amendment violation where there was no evidence of an improper motive or
13 intent in the chair's ejection of a member of the public from a meeting). A speaker may not
14 be stopped from speaking because the moderator disagrees with the viewpoint he or she is
15 expressing. *Acosta v. City of Costa Mesa*, 718 F.3d 800, 816 (9th Cir. 2013); *Dowd v. City of*
16 *Los Angeles*, 2013 WL 4039043 at 19-20 (finding a free speech violation where a public
17 commenter was stopped from criticizing the performance of the Council president).

18 Trustee Shoemake repeatedly interrupted Complainant Stevens and Mr. Bacus during
19 their comments at the beginning of the meeting in such a hostile manner that they were
20 compelled to defend themselves and their statements. The altercations repeatedly caused the
21 Chair to caution Trustee Shoemake regarding his behavior and ultimately take a recess
22 during the public comment period. While the OML permits, and the Board's public comment
23 statement echoes, the Board's ability to halt comment or remove a person who disrupts the
24 meeting such that its orderly conduct is made impractical, this disruption cannot be the
25 reaction of a public body member to criticism. NRS 241.030(4)(a); *Norse v. City of Santa Cruz*,

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1 629 F.3d 966, 979 (9th Cir. 2010).²

2 Complainant Stevens and Mr. Bacus were directly criticizing Trustee Shoemake's
3 actions in his role as a Board Trustee at Board meetings. Trustee Shoemake's interruptions
4 were directly in response to this criticism. Trustee Shoemake's statements at the end of the
5 meeting support this. While the Chair attempted to tame the altercation during the first
6 public comment period, he was decidedly hostile in his treatment of Complainant Stevens
7 during the final public comment period. Finally, the comments of another member of the
8 public at the end of the meeting that she was uncomfortable and nervous to speak indicate
9 that the interruptions had a chilling effect on the public's right to speak. Thus, the OAG finds
10 that the interruptions during public comment at the Board's August 8, 2022, meeting rose to
11 the level of a public comment restriction that was applied based upon viewpoint in violation
12 of NRS 241.020(3)(d)(7).

13 **SUMMARY**

14 Upon investigating the present Complaints, the OAG makes findings of fact and
15 conclusions of law that the Pahrump Community Library District Board of Trustees
16 violated the OML as described above. While the OAG finds that OML violations occurred,
17 it is the OAG's position that the violations were not willful, and that action was taken by
18 the Board to mitigate the severity of the violations. Accordingly, the OAG determines that

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25 ² The OAG cautions the Board that abruptly closing a public comment period without
26 checking to see if there are additional commenters, as occurred after the brief recess was
27 taken, could lead to an OML violation. However, the OAG does not possess evidence that
28 there were additional public commenters wishing to speak at that time. Further, the
additional public comment periods taken during the meeting appear to have offered
opportunity for all to speak that desired to.

1 foregoing prosecution would be in the best interests of the public.

2 Dated: January 8, 2024

3 AARON FORD
4 Attorney General

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

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 8th day of January 2024, I served the foregoing
3 **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same
4 in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL**
5 addressed as follows:

6
7 Marcia A. Peznowski

8 [REDACTED]
9 [REDACTED] [REDACTED]

10
11 Christy J. Stevens

12 [REDACTED]
13 [REDACTED] [REDACTED]

14 Pahrump Community Library District Board of Trustees
15 c/o Michelle J. Nelson, Senior Deputy District Attorney - Civil
16 Nye County Office of the District Attorney
P.O. Box 39
Pahrump, Nevada 89041
Certified Mail No.: 7020 2450 0001 1950 7191

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18
19 /s/ Debra Turman
20 An employee of the Office of the
21 Nevada Attorney General
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