

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:

4 NYE COUNTY SCHOOL DISTRICT
5 BOARD OF TRUSTEES
6
7

OAG FILE NO.: 13897-475

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

8 **BACKGROUND**

9 David Baruchowitz filed a complaint with the Office of the Attorney General (“OAG”)
10 alleging violations of the Nevada Open Meeting Law (“OML”) by the Nye County School
11 District Board of Trustees (“Board”). The Complaint alleges that the Board violated the
12 OML by going into closed session to discuss and deliberate on whether to approve a new
13 contract for the District’s Superintendent during its December 14, 2022, meeting.

14 The OAG has statutory enforcement powers under the OML and the authority to
15 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
16 241.040. The OAG’s investigation of the Complaint included a review of the Complaint and
17 supplemental information from Mr. Baruchowitz, the response from the Board, the agenda
18 and minutes of the Board’s December 14, 2022, meeting and the audio recording of the
19 closed session at issue.

20 After investigating the Complaint, the OAG determines that the Board violated the
21 OML by going into closed session to discuss and deliberate on the Superintendent’s
22 contract.

23 **FINDINGS OF FACT**

24 1. The Board held a public meeting on December 14, 2022. Item 17 on the public
25 notice agenda for the meeting read: “CLOSED SESSION PURSUANT TO NRS 288.220
26 FOR THE PURPOSE OF DISCUSSING PERSONNEL MATTERS.” Item 18 on the agenda
27 read: “APPROVAL OF THE SUPERINTENDENT’S CONTRACT, FOR POSSIBLE
28 ACTION.”

1 2. When it reached Item 17 during the meeting, the Board went into closed
2 session. The closed session attendance consisted of all Board members in attendance at
3 the meeting and no others. The closed session lasted approximately one hour, during which
4 the Board discussed the progress of negotiations with the Superintendent, why the
5 Superintendent was not present for the meeting, the Superintendent's past performance
6 with the District and whether continuing in his position was best for the District as a whole.
7 The Board also entertained a brief discussion regarding an investigation into emails of
8 concern being sent to the Superintendent by unknown parties. The closed session ended
9 with Board members agreeing that they had expressed their opinions to each other and
10 were ready to go out and vote.

11 3. The Board went back into the public meeting and voted to approve the new
12 contract for the Superintendent under Item 18.

13 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

14 The Board, as the governing body of a public school district under NRS 386.110, is a
15 public body as defined in NRS 241.015(4) and is subject to the OML.

16 Except as otherwise provided by a specific statute, all meetings of public bodies must
17 be open and public, and all people must be permitted to attend. NRS 241.020(1). The
18 legislative intent of the OML is that actions of public bodies "be taken openly, and that
19 their deliberations be conducted openly." NRS 241.010(1); *see also McKay v. Board of*
20 *Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) ("the spirit and policy behind NRS
21 Chapter 241 favors open meetings"). All exceptions to the OML must be construed
22 narrowly and in favor of openness. *Chanos v. Nevada Tax Comm'n*, 124 Nev. 232, 239, 181
23 P.3d 675, 680 (2008). "[T]he narrow construction of exceptions to the Open Meeting Law
24 stems from the Legislature's use of the term 'specific' in NRS 241.020(1) and that such
25 exceptions must be explicit and definite." *Id.* The OML "mandates open meetings unless
26 'otherwise specified by statute . . .'" *McKay*, 102 Nev. at 651.

27 Here, it is undisputed that the Board discussed the Superintendent's character and
28 professional competence and deliberated on whether to approve the new contract during

1 the closed session. The issue is whether any of the exceptions to the OML apply to the
2 discussion and deliberation, thus permitting its closure.

3 **A. Collective Bargaining Exception**

4 Nevada’s Government Employee-Management Relations Act excepts from the OML
5 any “negotiation or informal discussion between a local government employer and an
6 employee organization or employees as individuals” and any “meeting of the governing body
7 of a local government employer with its management representative or representatives.”
8 NRS 288.220. The Nye County School District meets the definition of a local government
9 employer in NRS 288.060. The OAG has repeatedly found this provision to be a complete
10 exception from the OML’s requirements. *In re Clark County School District Board of*
11 *Trustees*, OMLO 13897-410 at 4-5 (Dec. 2021); *In re Clark County School District Board of*
12 *Trustees*, OMLO 08-020 at 3-4 (Oct. 2008). The Board acknowledges that during the closed
13 session at issue, the Superintendent was not present, there were no management
14 representatives present and negotiations had already been completed. Thus, the OAG
15 finds that the closed session did not fall within the collective bargaining exception to the
16 OML.

17 **B. Attorney-Client Exception**

18 The Nevada Legislature has excepted from the OML gatherings of public bodies at
19 which a quorum is present “[t]o receive information from the attorney employed or retained
20 by the public body regarding potential or existing litigation involving a matter over which
21 the public body has supervision, control, jurisdiction or advisory power and to deliberate
22 toward a decision on the matter, or both.” NRS 241.015(3)(b)(2). The OAG has previously
23 held that this exception can apply to deliberations whether a public body would approve
24 certain terms in an employee’s contract, so long as the final contract is approved by the
25 body at a public meeting. OMLO 13897-410, *supra*, at 3-4. However, the Board again
26 acknowledges that there were no attorneys present during the closed session at issue to
27 advise the Board. Thus, the OAG finds that the closed session did not fall within the
28 attorney-client exception to the OML.

1 in this matter. The Board must also include the OAG Opinion in the supporting materials
2 for its next meeting.

3 Dated: April 19, 2024.

4 AARON FORD
5 Attorney General

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7 By: /s/ Rosalie Bordelove
8 ROSALIE BORDELOVE
9 Chief Deputy Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of April, 2024, I served the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, **CERTIFIED MAIL** addressed as follows:

David E. Baruchowitz



Complainant

Certified Mail No.: [Redacted]

Brian T. Kunzi
Nye County District Attorney's Office
P.O. Box 39
Pahrump, Nevada 89041
Counsel to the Nye County School District Board of Trustees

Certified Mail No.: 7020 2450 0001 1950 7337

/s/ Debra Turman
An employee of the Office of the
Nevada Attorney General