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5420 Kietzke Lane, Suite 202  
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July 19, 2018

Mr. Ronald R. Tetirick

**Re: Open Meeting Law Complaint, O.A.G. File No. 13897-288  
Discovery Charter School Receiver**

Dear Mr. Tetirick:

The Office of the Attorney General (OAG) is in receipt of your complaints (Complaints) alleging violations of the Open Meeting Law (OML) by the Discovery Charter School Receiver (Receiver) regarding a failure to properly notice OAG findings of fact and conclusions of law, a failure to e-mail you certain information, and a failure to post an agenda with clear and complete statements of the topics to be considered.

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. In response to the Complaints, the OAG reviewed the Complaints and attachments; the response to the Complaints from the Receiver's counsel, Africa A. Sanchez, Esq.; the agenda from the Receiver's May 23, 2018, meeting; the proposed agenda for the Receiver's May 30, 2018, meeting; and, the cancellation notice for the proposed May 30, 2018, meeting.

**FACTUAL BACKGROUND**

The Receiver is not a "public body" as defined in NRS 241.015(4) and, thus, is not subject to the OML. However, the Receiver is subject to a court order requiring the Receiver to hold public meetings "consistent" with the OML. Thus, the OAG examined the actions of the Receiver with regard to the OML for Findings of Fact and

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Conclusions of Law issued by the OAG on May 2, 2018 (Findings) as a matter of courtesy to the court. The OAG herein, and as a matter of courtesy to the court, again examines the actions of the Receiver with regard to the OML.

It should be noted that because the Receiver is not subject to the OML but acts in a manner "consistent" with the OML pursuant to court order, the proper venue for complaints regarding the Receiver acting in a manner inconsistent with the OML is the court. The OAG will regain OML enforcement powers regarding Discovery Charter School only upon reconstitution of its Board.

With regard to your three (3) pending Complaints against the Receiver:

Your first Complaint alleged the Receiver did not properly notice the requirements contained in the Findings.

The Findings concluded:

"As such, the Receiver must place these [Findings] on his next meeting agenda and include them in the supporting material. The agenda item must acknowledge these [Findings] to be the result of the OAG investigation in the matter of the Attorney General File Nos. 13897-250 and No. 13897-258, and that they have been placed on the agenda as a requirement of NRS 241.0395."

Findings at pp. 7-8. The Receiver's agenda for May 23, 2018, regarding this direction from the Findings, stated: "4. Acknowledgement of Office of the Attorney General State o (sic) Nevada Findings of Fact and Conclusions of Law AG File No's 13897-250 & 258, dated May 2, 2018 (Information/Discussion)."

Your second Complaint alleged you did not receive notice of the Receiver's meeting of May 23, 2018, via e-mail. You cite the following statement from the Findings in support of your allegation that the Receiver was required to send you notice via e-mail: "Mr. Tetirick agreed to receive notice of meetings via email. . . ." Findings, p. 5. The Receiver sent you a notice by regular mail on May 17, 2018.

Your third Complaint alleged the Receiver did not properly notice an item for the Receiver's proposed meeting of May 30, 2018. You filed your third Complaint on May 24, 2018. The item from the notice concerning the proposed meeting which your Complaint alleges was deficient states: "3. Potential Relocation of Mesa Vista Campus (Information/Discussion)." This proposed meeting was not held.

## DISCUSSION AND LEGAL ANALYSIS

Your first Complaint alleges the Receiver did not notice the Findings exactly as the Findings advised. If the OAG finds “a public body has taken action in violation of any provision of this chapter, the public body must include an item on the next agenda posted for a meeting of the public body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395(1). The Receiver did not notice the findings for its meeting of May 27, 2018, exactly as set out in the Findings. However, the agenda item on the notice did reflect the requirements of NRS 241.0395. Thus, if the Receiver were a public body subject to the OML, the OAG would not find the Receiver violated the OML here.

Your second Complaint alleges you did not receive notice of the Receiver’s meeting of May 23, 2018, via e-mail. NRS 241.020(3)(c) sets out notice of a meeting may be delivered to a person who has requested notice either by postal service or, if the requestor has agreed, by e-mail. As long as the requestor has agreed to receive notice by e-mail, the public body may provide notice by either e-mail or regular mail. The only time a public body is prevented from choosing e-mail or regular mail is when a requestor has not agreed to receive notice by e-mail. In that instance, the public body must provide notice by regular mail. The evidence provided in the Receiver’s response shows the Receiver properly sent you notice by regular mail. Thus, if the Receiver were a public body subject to the OML, the OAG would not find the Receiver violated the OML here.

Your third Complaint alleges the Receiver did not properly notice a proposed meeting for May 30, 2018, because one of the agenda items was “intentionally vague.” NRS 241.020(2)(d) requires an agenda consist of a “clear and complete statement of the topics scheduled to be considered during the meeting.” The proposed meeting for May 30, 2018, was cancelled and did not occur. As the meeting did not occur, a violation of the OML for a vague agenda item is not possible. Thus, if the Receiver were a public body subject to the OML, the OAG would not find the Receiver violated the OML here.

## CONCLUSION

As a courtesy to the court, the OAG has reviewed the available evidence and determined that no violations of the OML would have occurred if the Receiver were a public body subject to the OML. Further allegations with regard to whether or not the

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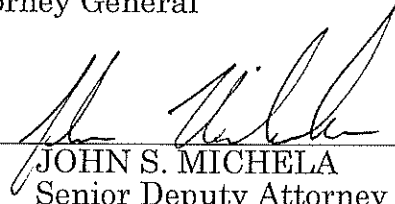
Receiver is acting "consistently" with the OML should be directed to the court as it is the body with the power to act regarding such allegations.

The OAG will close the file regarding this matter.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By:



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JSM:sad

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