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Via U.S. Mail & Certified Mail

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**Re: Open Meeting Law Complaint, OAG File No. 13897-437
In the matter of Washoe County School District Board of
Trustees**

Dear Complainants:

The Office of the Attorney General ("OAG") is in receipt of six (6) Complaints ("Complaints") alleging violations of the Open Meeting Law ("OML") by the Washoe County School District Board of Trustees ("Board"), related to the Board's October 25, 2021 meeting.

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. The OAG's investigation of the Complaints included a review of the following: the Complaints and all attachments; the response filed on behalf of the Board and all attachments; and the agenda, minutes and video recording of the Board's October 25, 2021 meeting.

After investigating the Complaint, the OAG determines that the Board did not violate the OML, as alleged in the Complaints.

FACTUAL BACKGROUND

The Board held a special meeting on October 25, 2021. The meeting was located at the boardroom in the District's Administration Building at 425 East Ninth Street, Reno, Nevada 89520. The Board also provided an overflow room for use by members of the public to observe and participate in the meeting, provided stereo speakers to broadcast the meeting to members of the public choosing to remain outside the Administration Building, livestreamed the meetings on the Internet and accepted public comments via email in addition to in person.

Three days prior to the meeting, the Board received guidance from the Chief of Police that the Board continue to use the Administration Building for its meetings for security and safety concerns. His stated his guidance was in response to the level of tension at recent meetings and members of the audience becoming confrontational with staff members and other members of the audience.

At the start of the meeting, the boardroom and overflow room were both full with over a dozen people gathering in the lobby of the building and more outside in the parking lot. Members of the public were permitted to connect to the District's Wi-Fi and Board staff made efforts to assist the public in connecting to the live stream of the meeting. An hour and a half into the meeting, there were available seats in the overflow room that members of the public chose not to occupy.

The agenda for the Board's October 25, 2021 meeting listed the following description for agenda item 2.01:

DISCUSSION AND POSSIBLE ACTION TO CORRECT A POTENTIAL VIOLATION OF THE OPEN MEETING LAW (OML) PURSUANT TO NEVADA REVISED STATUTE (NRS) 241.0365 FOR CONSIDERING THE CHARACTER, ALLEGED MISCONDUCT, AND/OR THE PROFESSIONAL COMPETENCE OF THE DISTRICT'S CHIEF GENERAL COUNSEL, NEIL A. ROMBARDO, REGARDING WHETHER THE CHIEF GENERAL COUNSEL KNEW OF THE RESIDENCY OF A FORMER TRUSTEE AS ALLEGED DURING BOARD REPORTS AT THE SEPTEMBER 28, 2021 MEETING WITHOUT PROVIDING NOTICE PURSUANT TO NRS 241.033; AND/OR CORRECT A POTENTIAL VIOLATION OF THE OML FOR POSSIBLY DELIBERATING THE ISSUE OF A FORMER TRUSTEE'S RESIDENCE WITHOUT PLACING

THE ITEM ON THE AGENDA PURSUANT TO NRS 241.020(3)(d); THE BOARD INTENDS TO TAKE ACTION TO CORRECT THESE POTENTIAL OML VIOLATIONS BY: 1) ACCEPTING THE FINDINGS OF THE GUNDERSON LAW FIRM INDEPENDENT INVESTIGATION REGARDING KNOWLEDGE OF A FORMER TRUSTEE'S CHANGE IN RESIDENCE; AND 2) REMOVING BOARD REPORTS FROM BOARD OF TRUSTEES' FUTURE AGENDAS AS RECOMMENDED IN THE OPEN MEETING LAW MANUAL FROM THE NEVADA ATTORNEY GENERAL'S OFFICE PURSUANT TO NRS 241.033, THE BOARD MAY CONSIDER THE CHARACTER, ALLEGED MISCONDUCT AND/OR PROFESSIONAL COMPETENCE OF CHIEF GENERAL COUNSEL, NEIL A. ROMBARDO, BOARD PRESIDENT ANGELA D. TAYLOR AND/OR TRUSTEE JEFFREY CHURCH (FOR POSSIBLE ACTION)

The report from the Gunderson Law Firm referred to in the agenda item ("Gunderson Report") was distributed to trustees and the public, as well as posted to the internet, at the time the agenda item was called. A 45-minute recess was taken after distribution of the report, but prior to discussion of the agenda item. After introducing the item, Board Counsel gave a brief summary of the discussion that had occurred during the Board's September 28, 2021 meeting. The Board then received and discussed a presentation from the Gunderson Law Firm regarding the report, received an hour of public comment on the item and voted to accept the report. The Board further voted not to remove "Board Reports" as a standing agenda item.

The Complaints allege: (1) the venue for the October 25 meeting was too small to accommodate anticipated attendance, (2) Agenda Item 2.01 was not a clear and complete statement of the topics scheduled to be considered, and (3) the Board failed to give copies of the Gunderson Report as supporting material for the meeting upon request.

LEGAL ANALYSIS

The Washoe County School District Board of Trustees is a "public body" as defined in NRS 241.015(4), and therefore, the Board is subject to the OML.

A. The Board did not violate the OML's minimum requirements for facility size at its October 25 meeting.

The OML requires that reasonable efforts be made to “ensure the facilities for meetings are large enough to accommodate the anticipated number of attendees”. NRS 241.020(2). No violation will occur if a member of the public is not permitted to attend a public meeting because the facilities for the meeting have reached maximum capacity if reasonable efforts were taken to accommodate the anticipated number of attendees. *Id.* Further, the OML does not require a public body to incur any costs to secure a facility outside the control or jurisdiction of the public body. *Id.* The OAG recently opined that the Board did not violate the OML by moving its meetings from school grounds to the boardroom in the District's Administration Building earlier in the year. *In re: Washoe County School District*, OMLO 13897-426 (Apr. 18, 2022).

Reasonableness is determined by examining the facts and circumstances of each meeting. Prior to the meeting at issue, the Board consulted with its Chief of Police regarding the choice of venue and safety concerns. The Board made significant efforts to allow public to view the meeting and make public comment. Board staff notified attendees when seats opened up in the boardroom or overflow room so that additional people might enter. The OAG does not find a violation of the OML in this instance. However, due to capacity problems being a continued issue for the Board's meetings, the OAG encourages the Board to consider other times and locations within its control or jurisdiction for future meetings.

B. Agenda Item 2.01 gave notice of the topics scheduled to be considered at the meeting.

One of the Complaints alleges that Agenda Item 2.01 failed to meet the clear and complete requirement in the OML as it generated considerable confusion from trustees and the public as to what they were permitted to do under the item. Under the OML, an agenda of a public body must include “a clear and complete statement of the topics scheduled to be considered during the meeting.” NRS 241.020(3)(d)(1). The clear and complete requirement of the OML stems from the Legislature's belief that “incomplete and poorly written agendas deprive citizens of their right to take part in government' and interferes with the press' ability to report the actions of government.” *Sandoval v. Board of Regents of Univ.*, 119 Nev. 148, 154 (2003). The OML “seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” *Id.* at 155. Further, a higher degree of specificity is needed

when the subject to the debated is of special or significant interest to the public.
Id.

Here, the OAG first finds this matter to be of special or significant interest to the public, which triggers the requirement that the agenda provide a higher degree of specificity under *Sandoval*. The agenda item gave notice that the Board would discuss and possibly take action regarding: (1) a report from the Gunderson Law Firm, and (2) whether to keep “Board Reports” as a standing agenda item. The item further gave notice that the Board would discuss its potentially violating the OML at a prior meeting and the character, alleged misconduct and/or professional competence of the Board President, General Counsel and one of its Trustees. During the meeting at issue, the Board received a presentation on the report listed and then discussed at length the other issues noted in the agenda item. There was significant attendance and comments from the public regarding the item, indicating that interested public knew what was to be discussed.

Complainant alleges that because the specific potential OML violation is not listed and there was confusion as to what exact action and/or motion the Board would make, the item violated the law. The purpose of the clear and complete requirement is to give notice to the public so that they may determine if they want to attend and participate in a meeting. This goal was accomplished here. The public was on notice that the Board would discuss and possibly take action regarding their potential OML violation, the Gunderson Report, the Board Reports standing agenda item and the character of three people related to this issue. The Board’s discussion did not extend beyond these topics to an OML violation.

C. The Board did not violate the OML by waiting to distribute the Gunderson Report until the meeting started.

One of the Complaints alleges that the Board refused to include the Gunderson Report in its supporting material for the meeting and to provide it upon request. The OML requires supporting material to be provided to members of the public upon request. NRS 241.020(7)(c). Supporting material is required to be available to members of the public at the same time as it is provided to members of the public body. NRS 241.020(8).

Complainant requested a copy of the report prior to the meeting and was refused. It is undisputed that the Gunderson Report was not provided to the Board members until Agenda Item 2.01 was called, during the meeting. Indeed, members of the Board protested that they had not been given an opportunity to review the report ahead of time. Thus, the Board was not

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required to provide copies of the report to the public until it was distributed to members and did not violate the OML in that respect.

CONCLUSION

Upon investigating the present Complaints, the OAG finds that the Washoe County School District Board of Trustees did not violate the OML. The OAG will close its file on this matter at this time.

Sincerely,

AARON D. FORD
Attorney General

By:

/s/ Rosalie Bordelove
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