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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

October 2, 2019

Via U.S. Mail

Annemarie Grant
[REDACTED]

Re: Washoe County Commissioners - Open Meeting Law
Complaint, OAG File No. 13897-319

Dear Ms. Grant:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Open Meeting Law (OML) by the Washoe Board of County Commissioners (Board). Your complaint (Complaint) states you have been sending the Board written statements and requesting that the substance of said statements to be reflected in the minutes of the Board's meetings. The violations alleged in the Complaint, in summary, assert that the Board violated the OML when its minutes did not reflect the substance of the statements you emailed/sent to the Board.

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. In response to your Complaint, the OAG's review of the record included: the Complaint and attachments and the Board's response to the Complaint (Response) and its attachments.

FACTUAL BACKGROUND

The Board is a "public body" as defined in Nevada Revised Statute (NRS) 241.015(4), and subject to the OML.

As noted above, the complainant, Annemarie Grant (Complainant) alleges that she submitted written statements to be introduced at Board meetings for eleven of the Board's meetings between June 19, 2018, and February 12, 2019.

The record supports that these written statements (Statements) were received by the Washoe County Clerk's Office (WCCO) who would generally respond to the Complainant by representing that the Statements were received and would be made part of the Board meeting's record. The Board minutes for these meetings reflect as much wherein they provide that the WCCO received documents/emails from the Complainant and that they would be made part-of-the-record/placed-on-file for the respective meeting.

The instant Complaint argues that the substance of the Statements needed to be reflected in the minutes for the above referenced meetings as public comment. However, there is no legal authority requiring a public body to memorialize within its meeting minutes the substance of written statements.

DISCUSSION AND LEGAL ANALYSIS

The Complaint alleges that the Statements constitute "public comment" and further that their substance must be reflected in the Board's meeting minutes. The Nevada Legislature has given members of the public the right to address public bodies. NRS 241.020(2)(d)(3). Once a person is given a right to address a public body, thereafter that right may be limited only within constitutional parameters. *Rosenberger v. Rector*, 515 US 810, 829 (1995). One such constitutional limitation is Nevada's requirement that public comment actually be spoken to the public body. Such is exemplified by NRS 241.035(1)(d) which states:

1. Each public body shall keep written minutes of each of its meetings, including:

...

(d) The substance of remarks made by any member of the general public who addresses the public body if the member of the general public requests that the minutes reflect those remarks or, if the member of the general

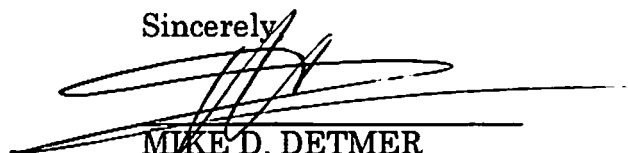
public has prepared written remarks, a copy of the prepared remarks if the member of the general public submits a copy for inclusion.
[emphasis added]

NRS 241.035(1)(d) specifies that persons making public comment may also provide a written statement of his or her public comment for inclusion in the minutes of the meeting. However, the plain language of this statute only directs the public body to accept the written comment of the person who actually “addresses” the public body.¹ NRS 241.035(1)(d) does not create a statutory obligation for the public body to memorialize within its meeting minutes the substance of written statements (especially when it is not supplementing/accompanying comment actually spoken to the public body). Additionally, neither NRS 241.020(2)(d)(3) nor NRS 241.035(1)(d)’s language allow for the interpretation that the Statements automatically constitute “public comment” under the OML. As such, absent law or facts to the contrary, the Board has not violated the OML.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred.

Sincerely,



MIKE D. DETMER
Deputy Attorney General
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MDD/dw

¹ See OML AG File No. 13897-175; see also OML AG File No. 13897-161 wherein the AGO, in finding that the Dental Board of Examiners did not violate the OML, stated: “...no public body has to accept a document such as ‘Written and Signed Complaint’ during public comment, because *random submissions not reflecting the person’s actual comment do not have to be accepted by the public body for inclusion in its minutes* or even if offered for another purpose like the ‘Written and Signed Complaint’ offered by Dr. Brooksby.” [emphasis added]

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CERTIFICATE OF MAILING


I hereby certify that on the 10th day of October, 2019, I served the foregoing letter by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, Certified Mail, addressed as follows:

Annemarie Grant


Certified Mail No. 7009 3410 0002 3251 6755

Paul A. Lipparelli,
Assistant District Attorney
One South Sierra St.
Reno, NV 89501

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