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May 3, 2023

Via Electronic and U.S. Mail

Jason Guinasso
Hutchinson & Steffen, PLLC
On behalf of the Reno Christian Fellowship
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**Re: Open Meeting Law Complaint, OAG File No. 13897-390, Washoe
County Board of County Commissioners**

Dear Mr. Guinasso:

The Office of the Attorney General (“OAG”) has received your Complaint alleging that the Washoe County Board of County Commissioners (“Board”) violated Nevada’s Open Meeting Law (“OML”) leading up to its December 15, 2020, open meeting. Pursuant to Nevada Statute, the Office of Attorney General is authorized to investigate and prosecute violations of Open Meeting Law. *See* Nevada Revised Statutes (“NRS”) 241.037, 241.039, and 241.040.

Following its review of your Complaint; the Board’s Response; minutes from the December 15, 2020, open meeting; prior OML opinions, and relevant legal authorities; the OAG concludes the Board did not violate Nevada’s Open Meeting Law as alleged in the Complaint.

FACTUAL BACKGROUND

The Board had a meeting on December 15, 2020, in which it denied an appeal of the Reno Christian Fellowship (“RCF”) regarding the Planning Commission’s decision to deny a Regulatory Zone Amendment under Case Number WRZA-0003. The RCF wanted approval to rezone three plots of land to allow for a greater number of homes and dwellings to be built and occupied.

The Complaint alleges that the Board “violated the Open Meeting Law by deliberating outside of a meeting towards the decision they ultimately made resulting in a final action on December 15, 2020,” that the Board “maintain[s] ... a standing ‘predetermination rule’ wherein other county commissioners will follow the vote of the commissioner representing the district which the proposed action will effect,” and that the Board engaged in “walking quora” through serial communications, in person, via text message, and via email.

The OAG was provided several voluminous exhibits containing text and e-mail communications amongst the Commissioners in which the alleged improper communications occurred, as well as the transcripts of the meetings at which the action at issue was taken.

DISCUSSION AND LEGAL ANALYSIS

The Washoe County Board of County Commissioners is a public body as defined by Nevada Revised Statute (“NRS”) 241.015(4) and is subject to the OML.

The OML prohibits private deliberations by a quorum of a public body, whether in person, or via electronic, remote video, phone, or text communications. NRS 241.015(3); 241.020(1). However, nothing in the evidence reviewed established that there were serial communications, discussions, or deliberations of any public business. There were several messages sent from Fire Department and Emergency Services personnel to the group of Commissioners advising of traffic, medical, or fire emergencies in the county. These were not violative, as there was no discussion or deliberation of any proposed action by the Board. Further, such messages were preceded by a notice to the recipients to refrain from responding to the group. In the two instances in which a recipient responded to the group, the responses were not discussed or deliberated upon, and they stopped immediately.

Your complaint focuses on action allegedly taken by the Board based on their private communications via text and email. Nevada is a “quorum state”, such that “... [w]hen less than a quorum is present, private discussions and information gathering do not violate the Open Meeting Law.” *Dewey v. Redevelopment Agency*, 119 Nev. 87, 99, 64 P.3d 1070, 1078 (2003). Further, the OML prohibits walking quora, or serial communications, if such communications were, or were attempting to “... accumulate secret consensus or vote of the members.” See NEVADA OPEN MEETING LAW MANUAL, § 4.08 (12 ed. 2016). However, the Nevada Supreme Court has “... acknowledged that the Open Meeting Law is not intended to prohibit every private discussion of a public issue. Instead, the Open Meeting Law only prohibits collective deliberations or actions where a quorum is present.” *Dewey* at 99.

In investigating the above allegations, the Attorney General's Office reviewed several series of communications between and amongst the Commissioners, covering a range of subjects. We have concluded that these were private communications between Board members that did not include or amount to collective deliberations or actions where a quorum was present.

The term "deliberate" means "collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to [an] ultimate decision." NRS 241.015(2). During the period of time leading up to the meeting at issue, the OAG does not possess evidence that the Board examined, nor weighed or reflected upon the reasons for or against any action. Thus, they did not deliberate, nor did they vote or poll, and they made no commitment or promise regarding any specific matter including the RCF Appeal. Therefore, the OAG does not find evidence of a walking quorum, predetermination rule, discussion, or deliberation, as defined in NRS 241.015(2), by the Board.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred on which formal findings should be made. The OAG will close its file regarding this matter.

Respectfully,
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Attorney General

By: 
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