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Via Electronic and U.S. Mail

Bradley G. Harris



Re: Open Meeting Law Complaint, OAG File No. 13897-422, Carson City Airport Authority Board of Trustees

Dear Mr. Harris:

The Office of the Attorney General (“OAG”) has received your Complaints alleging that the Carson City Airport Authority Board of Trustees (“Board”) violated Nevada’s Open Meeting Law (“OML”) at its June 16 and June 28, 2021, open meetings regarding hiring of a new Airport Manager.

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. To investigate the complaints, the OAG reviewed the complaints, responses from the Board, the agendas, minutes and recordings of the Board’s June 16, June 28 and July 21, 2021, meetings as well as posting documentation prepared by the Board pursuant to NRS 241.020(5). After investigating the complaints, the OAG determines that the Board did not violate the OML as alleged in the complaints.

FACTUAL BACKGROUND

The Board held a public meeting on June 16, 2021. Item F.4. of the public notice agenda stated:

4. FOR DISCUSSION & POSSIBLE ACTION: Review job applicants and the recommendations of the hiring committee. Authorize and approve the next steps in the hiring process, including determining the finalists and setting dates to meet the candidates at the airport. (Bradley Harris/Tim Puliz/Paul Hamilton)

Staff Summary: Hiring committee to share the data collected, resumes, evaluation tools, and initial findings of their work with job applicants, and to outline the next steps in our recruitment efforts.

When the agenda item was called, a presentation was given regarding the efforts of the hiring committee and the top two candidates that were being forwarded to the Board. This included the Complainant, as a member of the hiring committee, describing a process plan for further interviews of final candidates. Other members expressed their desire to shorten the process and move forward with making an offer to one candidate. Some members expressed disagreement with changing the hiring process while others worried they would lose good candidates if the process took too long. The Board voted 6-1 to authorize the Airport Acting Manager and the Chairman of the Board to continue the process of hiring one specific candidate, Corey Jenkins, and begin salary negotiations.

At the time of the June 16 meeting, the Board consisted of 7 members, all of whom were present. During discussion of Item F.4., Member Puliz made comments indicating he had discussed the matter with 2 other members prior to the meeting and that they were in favor of one course of action.

The Board held a public meeting on June 28, 2021. Item F.1. on the public notice agenda stated:

1. FOR DISCUSSION & POSSIBLE ACTION: Formally confirm the acceptance of the job offer as Carson City Airport Manager offered to Corey Jenkins.

Interim Airport Manager's summary: At the June 16, 2021 meeting, the CCAA authorized the negotiation of a job offer of Airport Manager to Corey Jenkins with approval to be considered at a special meeting held for that purpose. An offer was negotiated. Mr. Jenkins has committed to begin his position one month after the Board issues their approval. This meeting is to consider that approval. Airport Staff and the airport users involved in the interviews recommend approval.

When the agenda item was called, the Board Chairman introduced the item and referenced supporting material that had been provided to members. The Board then voted 6-0 to approve the employment offer to Corey Jenkins. The entire meeting lasted about 15 minutes.

The Board held a public meeting on July 21, 2021. Item F.1. of the public notice agenda was intended to take corrective action to cure any alleged violation of the OML that had occurred at the Board's June 16 and June 28 meetings. The Board's discussion consisted of whether to include retirement benefits in the Airport Manager's contract and then the Board voted 5-0 to approve its former actions and include retirement benefits in the contract.

Complainant filed the instant complaints alleging (1) Item F.4. on the Board's June 16 agenda did not meet the clear and complete standard; (2) a quorum of Board members participated in a secret meeting prior to the Board's June 16 meeting; (3) supporting material was not distributed to Board members until just before the June 16 meeting; (4) the agenda for the June 28 meeting was not posted to the required locations; and (5) Item F.1. on the Board's June 28 agenda did not meet the clear and complete standard. The Board argues that it did not violate the OML and in addition, any potential violation was cured via corrective action at the Board's July 21 meeting.

DISCUSSION AND LEGAL ANALYSIS

The Carson City Airport Authority Board of Trustees is created and governed by the Airport Authority Act for Carson City, originally passed by the Nevada Legislature in 1989. It meets the definition of a public body in NRS 241.015(4) and is subject to the OML.

As a preliminary matter, allegation #3 fails to state a claim under the OML. The OML does not contain a requirement that supporting material be

given to public body members within any particular time frame, only that supporting material be available to the public at the time it is given to members. NRS 241.020(8).

A. Clear and Complete Statement Requirement (Allegations #1 and 5)

An agenda for a meeting of a public body must include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(3)(d)(1). The “clear and complete statement” 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 be debated is of special or significant interest to the public.’” *Id.* at 155-56 (quoting *Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. App. 2000)).

The discussion by the Board at its June 16 meeting did not stray beyond the agendized topic. Public bodies should apply a reasonableness standard in determining whether an agenda item is clear and complete. *In re Nevada State Board of Veterinary Medical Examiners*, OMLO No. 13897-363 at 5 (Jan. 8, 2021). The agenda at issue gave the public notice that the Board would discuss the efforts of the hiring committee and whether to take the next step in the hiring process, which is what the Board did. The Board did not approve a contract or even a salary amount to offer. Thus, the OAG finds that the discussion and final action fit within the clear and complete statement on the agenda.

Likewise, the discussion by the Board at its June 28 meeting also did not stray beyond the agendized topic. The agenda item contemplated the Board approving an official offer to the new Airport Manager and named who it would be in that item. Thus, the OAG does not find violations of the OML with respect to allegations #1 and 5.

B. Communications Outside of the Public Meeting (Allegation #2)

Under the OML, a “meeting” occurs when a quorum of public body members gathers and deliberates or takes action on any matter over which the public body has jurisdiction, control, or advisory power. NRS 241.015(3)(a)(1). “‘Quorum’ means a simple majority of the membership of a public body or another

proportion established by law.” NRS 241.015(5). The Board’s established quorum requirement is the same. Airport Authority Act for Carson City, Chapter 844, Statutes of Nevada 1989, § 7(2). In June 2021, the Board had 7 members, making 4 required for a quorum. The OAG only possesses evidence that 3 members of the Board deliberated regarding item F.4. of the June 16 agenda outside of the public meeting. Thus, without a quorum conducting deliberations, the OAG does not find a violation of the OML with respect to allegation #2. The OAG cautions Board members to be careful when discussing matters within the Board’s jurisdiction and control outside of a public meeting.

C. Posting Requirements for the June 28 Meeting (Allegation #4)

Public bodies must post their agendas to (1) their principal office, (2) their website, if they maintain one, and (3) the official notice website of the State. NRS 241.020(4)(a)-(b); NRS 241.020(6).¹ For each of its meetings, a public body must also document in writing that it has complied with the minimum public notice requirements. NRS 241.020(5). This documentation must be prepared by every person who posted a copy of the public notice. *Id.*

Board staff documented posting to the principal office of the body, a community center and both required websites. Staff emailed the agenda to Carson City staff for posting at 3 additional physical locations. The Complainant particularly questioned whether the agenda was posted at Carson City Hall. As Carson City Hall was not a required posting location, the OAG does not find a violation of the OML with respect to allegation #4.

D. Corrective Action

As the OAG did not find violations of the OML with respect to Complainant’s allegations, the OAG will not address whether the Board’s July 21 action was sufficient to constitute corrective action under NRS 241.0365 and NRS 241.020(3)(d)(2).

¹ The June 16 agenda listed 5 separate physical posting locations, including the principal office of the public body. Prior to May 31, 2021, public bodies were required to post to additional physical locations. However, AB253 of the 2021 Legislative Session reduced the posting requirement prior to the June 16 meeting.

CONCLUSION

Upon review of your complaints and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close its file regarding this matter.

Respectfully,
AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
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cc: Steve Tackes, Esq., counsel for the Carson City Airport Authority
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