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September 14, 2023

Via U.S Mail and Email

Jodi Thornley



Erin Phillips



**Re: Open Meeting Law Complaint, OAG File No. 13897-446
Clark County School District Board of Trustees**

Dear Ms. Thornley and Ms. Phillips:

The Office of the Attorney General (“OAG”) is in receipt of your complaints (“Complaints”) alleging violations of the Open Meeting Law (“OML”) by the Clark County School District Board of Trustees (“Board”) regarding the Board’s April 28, 2022, 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 Complaints, the Response on behalf of the Board, and the agenda, video recording and supporting material for the Board’s April 28, 2022, meeting. 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 April 28, 2022. Agenda Item 3.03 of the Board's public notice agenda stated:

Discussion and possible action on approval to accept the recommendation of the Sex Education Advisory Committee for items 1320 and 1320S, 1321 and 1321S, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, and 1333, is recommended. (For Possible Action) [Contact Person: Dustin Mancl]

The item was included as part of the consent agenda. Supporting material for the meeting was accessible on the Board's website or by request to Board staff. Supporting material for Item 3.03 included titles and material types for each of the item numbers listed in the agenda item along with information on how the Sex Education Advisory Committee ("Committee") of the Board voted on the materials. Information was also included regarding the membership of the Committee and the dates of the meetings where the recommendations occurred.

When the larger "Item 3" (the consent agenda) was called during the meeting, the Board took a public comment period devoted to comments on the consent agenda. This period lasted for about 90 minutes and included many public comments specific to Item 3.03. Trustee Williams made a motion to approve the consent agenda with the removal of Item 3.03 for a separate vote. It was seconded by Trustee Ford. The Board engaged in a brief discussion regarding whether to pull the Item for discussion with members against pulling Item 3.03 stating that they did not want the Board to engage in discussion on the item prior to voting. The motion failed by a vote of 4-3. The Board then voted 5-2 to approve the consent agenda without discussion on any items.

The Complaints allege that Item 3.03 did not meet the clear and complete standard for agenda items as it was too vague, was hidden in the consent agenda, and did not include that some of the educational materials to be approved were produced by a private organization.

LEGAL ANALYSIS

The Clark County School District Board of Trustees, created under the provisions of NRS Chapter 386, is a public body as defined in NRS 241.015(4) and is subject to the OML.

As a preliminary matter, a “consent agenda” or “consent calendar” is an organizational tool on an agenda to inform the public and members of the public body that the body intends to take certain items together and likely will not engage in discussion on those items unless a member objects. Robert, Henry III et al., ROBERT’S RULES OF ORDER 41:32 (12th ed. 2020). The OML specifically permits this practice. NRS 241.020(3)(d)(6)(II). However, any item must meet the same agenda requirements, whether it is on the consent agenda or not. NRS 241.020(3)(d)(1)-(2).¹

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)).

While the OAG does find that this item is of significant public interest, it also finds the agenda item to be a clear and complete statement of the topics scheduled to be considered. The agenda item gave the public notice that the Board would consider whether to approve the recommendations of the Committee on specific educational materials that were listed in the item. Posted with the agenda for the meeting were further descriptions of those recommendations and materials.² Moreover, the Board’s discussion of the topic consisted merely of a vote and did not stray into other subjects. *Sandoval*, 119 Nev. at 155-56 (finding a violation only where the discussion by the body

¹ The OAG notes that the traditional use of a consent calendar, including that described in Robert’s Rules of Order, allows any member to remove an item for discussion at any time. In this instance, a Trustee attempted to do so, but was prevented. The OML is a public facing law and largely does not address parliamentary procedure. However, the spirit of the law is to protect public access and participation in the conduct of the people’s business. NRS 241.010. As such, preventing a public body member from discussing his or her reasons for or against an action during a public meeting runs contrary to that spirit and intent.

² The Committee itself is a public body and conducted public meetings where it made the recommendations that were later presented to the Board. Committee Meeting information and supporting material, which included links to the educational videos themselves, was also available on the Board’s website and by request.

strayed into topics not included on the agenda); *In re Minden Town Board and Douglas County Planning Commission*, OMLO 13897-338 & 339 at 6-8 (Aug. 14, 2020) (finding a violation of the OML when the discussion by the bodies centered on a specific development project that was not listed in the agenda item). Thus, the topic scheduled to be considered was clearly and completely stated.

CONCLUSION

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

Sincerely,

AARON D. FORD
Attorney General

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