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January 5, 2024

Via U.S Mail and Email

Jeffrey D. Church

[REDACTED]
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-451
Washoe County School District Board of Trustees**

Dear Mr. Church:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging violations of the Open Meeting Law (“OML”) by the Washoe County School District Board of Trustees (“Board”) regarding the Board’s June 14, 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 Complaint included a review of the Complaint; the Response on behalf of the Board, including affidavits from five Board trustees; and the agenda, minutes and video recording for the Board’s June 14, 2022, meeting. After investigating the Complaint, the OAG determines that the Board did not violate the OML as alleged in the Complaint.

FACTUAL BACKGROUND

The Board held a public meeting on June 14, 2022. Earlier in the day on June 14, Complainant, also a Board trustee, sent a letter to the Board Chair detailing why he believed the Chair and four other trustees should make ethical disclosures and abstain from voting on Item 3.01. The Board Chair saw

this letter shortly before the meeting and sent it to other trustees and legal counsel.

During the meeting, just prior to Item 3.01, the Chair called a recess to consult with legal counsel. Five trustees met in private with independent counsel to the Board and Washoe County School District General Counsel during the recess. Counsel provided the five trustees with advice regarding their ethical obligations under Nevada's Ethics in Government Law, NRS Chapter 281A. The five trustees did not discuss the substance of Item 3.01 or other items on the Board's agenda.

When the meeting reconvened, Trustee Rodriguez made a motion to postpone six items, including Item 3.01, to another meeting so the five trustees currently running for reelection could determine if disclosures were necessary. The Board trustees discussed their reasons for voting in favor of the motion and then voted to pass the motion.

The Complaint alleges that a quorum of the Board conducted a meeting in private with legal counsel that did not fit the litigation exception contained in NRS 241.015(3)(b)(2).

LEGAL ANALYSIS

The Washoe 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.

Except as otherwise provided by specific statute, all meetings of public bodies must be open and public. NRS 241.020(1). Under the OML, the term "meeting" means "[t]he gathering of a public body at which a quorum is present . . . to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power." NRS 241.015(3)(a)(1). However, an exception to the definition of a meeting is a gathering with the public body's legal counsel "regarding potential or existing litigation involving a matter over which the public body has supervision, control, jurisdiction or advisory power and to deliberate toward a decision on the matter, or both." NRS 241.015(3)(b)(2).

It is undisputed that a quorum of members of the Board gathered in private with the Board's legal counsel during the recess. At issue is whether this gathering constituted a "meeting" under the OML and if so, whether that meeting fits the litigation exception. The OAG finds that the gathering did not

Jeffrey D. Church
January 5, 2024
Page 3

constitute a “meeting” under the OML and thus does not need to address whether it met the litigation exception.

The Board submitted affidavits from all five trustees who attended the gathering and all confirmed that the purpose of the gathering was to receive advice regarding their ethical obligations surrounding disclosures and abstentions prior to voting. Further, all five affidavits stated that the trustees did not discuss the substantive details of agenda items. Indeed, in alleging that the gathering did not meet the litigation exception, Complainant stated his belief that the gathering’s discussion surrounded disclosures. Comments by the trustees when the meeting reconvened corroborate this.

Disclosures and abstentions under Nevada’s Ethics in Government Law are individual in nature such that a public official must make the decision to disclose or abstain, not the body he or she is a member of. NRS 281A.420; *see Carrigan v. Commission on Ethics of State*, 129 Nev. 894, 901-03, 313 P.3d 880, 885-86 (2013). Thus, any discussion or deliberation that may have occurred regarding disclosures and abstentions on agenda items were not within the Board’s “supervision, control, jurisdiction or advisory power” and did not constitute a “meeting” under the OML. NRS 241.015(3)(a)(1). As such, the OAG does not find a violation of the OML with respect to the gathering during a recess of the Board’s June 14 meeting.

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 its file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
ROSALIE BORDELOVE
Chief Deputy Attorney General

Jeffrey D. Church
January 5, 2024
Page 4

cc: Neil Rombardo, Chief General Counsel,
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