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April 19, 2024

Via U.S Mail and Email

Abel Del Real-Nava



**Re: Open Meeting Law Complaint, OAG File No. 13897-464
Humboldt County Board of Commissioners**

Dear Mr. Del Real-Nava:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging violations of the Open Meeting Law (“OML”) by the Humboldt County Board of Commissioners (“Board”) regarding its October 17, 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 and attachments, the Response on behalf of the Board, and the agenda, minutes and recording for the Board’s October 17, 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 October 17, 2022. Item #14 on the public notice agenda stated:

**HUMAN RESOURCES: APPROVAL OF AGREEMENT WITH
CPS HR CONSULTING FOR EMPLOYEE ENGAGEMENT
SERVICES (FOR POSSIBLE ACTION) – Consideration,**

discussion, and possible approval of a request from the Assistant County Manager/Human Resources Director to enter into an agreement with CPS HR Consulting for Employee Engagement Services that includes the development of an employee engagement survey that will be used to collect responses from Humboldt County employees to measure overall employment satisfaction. The agreement would be for an amount not to exceed \$12,500. Discussion and possible action.

During the first public comment period of the meeting, Commissioner Thomas Hoss raised concerns about a new employee of the County who had been given use of a County vehicle to drive to and from work and asked for an investigation into who allowed it to occur.

When Item #14 was called, the Assistant County Manager/Human Resources Director presented the item and answered questions from some Commissioners. The Board then spent about 20 minutes deliberating on whether or not to approve the contract at issue and whether the services were necessary. During deliberation, Commissioner Hoss stated he believed the human resources function should be separated from management and that instead of hiring a company to perform the work at issue, it should be done in house. He further stated he understood that this type of work was the job of the Assistant County Manager/Human Resources Director and he had not been able to do it because the employees would not come forward. The Board voted to approve the contract with Commissioner Hoss voting no.

Complainant, the Assistant County Manager/Human Resources Director, filed the instant complaint alleging the Board violated the OML by failing to give notice to him that his character and professional competence would be discussed during the meeting and by going beyond the scope of the agenda item during their discussion of Item #14.

LEGAL ANALYSIS

The Humboldt County Board of Commissioners, as the governing body of a Nevada county, is a public body as defined in NRS 241.015(4) and is subject to the OML.

A. The Board was not required to send notice to Complainant under NRS 241.033.

If a public body considers the character, alleged misconduct, professional competence, or physical or mental health of a person during a

meeting, it must provide adequate notice to that person ahead of the meeting. NRS 241.033(1). In determining whether a violation of the notice requirement contained in NRS 241.033 has occurred, the OAG reviews the actual discussion by the public body. *In re Mineral County School District Board of Trustees*, OMLO 13897-406 (May 31, 2022); *In re Lander County Commissioners*, OMLO 13897-351 (Aug. 5, 2020). The OAG evaluates the substance of the discussion and contextual cues to determine whether the notice requirement applies. *In re Esmeralda County Board of Commissioners*, OMLO 13897-419 (Jan. 16, 2023).

Here, Commissioner Hoss is the only member of the Board who made comments regarding Complainant in his position with the County. The OAG need not determine whether these comments rise beyond tangential references to discussion of character because there was no collective discussion of Complainant's performance between Board members. *In re Ely City Council*, OMLO 13897-299 (Oct. 12, 2018) (finding unilateral comments of one public body member that touch on a person's character, without facts implicating the conduct of the body generally, do not cause a violation of the notice requirement under NRS 241.033). The OAG finds the evidence does not support your allegations that the Board considered your character, alleged misconduct, professional competence, or physical or mental health.

B. Agenda Item #14 on the Board's October 17, 2022, agenda clearly and completely described the action that took place.

An agenda for a meeting of a public body must include a "clear and complete statement of the topics scheduled to be considered during the meeting." NRS 241.020(2)(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 University*, 119 Nev. 148, 154 (2003).

During Item #14, the Board discussed and deliberated upon the reasons for and against approving the contract listed in the agenda item. The action the Board ultimately took was to approve the agreement. This discussion fits squarely within the agendized item, whether or not to approve a specific agreement. The OAG finds the agenda item to have clearly and completely described the discussion and action taken.

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

By: /s/ Rosalie Bordelove
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cc: Wendy N. Maddox, Deputy District Attorney
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