

ADAM PAUL LAXALT
Attorney General



J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

August 1, 2018

Via U.S. Mail

Mr. Jeffrey D. Church

**Re: Open Meeting Law Complaint, OAG File No. 13897-274
Washoe County School District Oversight Panel for School
Facilities**

Dear Mr. Church:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Open Meeting Law (OML) by the Washoe County School District Oversight Panel for School Facilities (Panel) regarding whether various members of the Panel deliberated and took action outside of a public meeting with regard to the contents of reports required to be issued by the Panel by statute.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (NRS) 241.037; NRS 241.039; NRS 241.040. In response to your complaints, the OAG reviewed your complaint and attachments; the Panel's response and attachments; and meeting documents prepared for the March 29, 2018, meeting.

FACTUAL BACKGROUND

The Panel is a "public body" as defined in NRS 241.015(4) and subject to the OML.

On March 22, 2018, you submitted an OML complaint to the OAG. Your complaint seems to concern the issuance of reports by the Panel to the Nevada Legislative Counsel Bureau (LCB) as required by NRS 393.097.

Mr. Jeffrey D. Church
Page 2
August 1, 2018

The two reports prior to your complaint were issued by the Panel in 2016 and 2014. The Panel also approved a draft report/letter to LCB as required by NRS 393.097 at its meeting of March 29, 2018. The draft report/letter included in the Panel's materials for its meeting of March 29, 2018, was dated March 23, 2018.

On March 15, 2018, Katy Simon Holland, President of the Washoe County School District Board of Trustees, sent you an e-mail stating: "The District had difficulty getting quorums for the Oversight Panel just to approve a letter to the LCB, so in order to provide the statutorily required report to the LCB, the report has been prepared, reviewed by the Panel members and then submitted over the Panel Chairman's signature."

DISCUSSION AND LEGAL ANALYSIS

Chapter 241 of the Nevada Revised Statutes requires the actions of public bodies "be taken openly and that their deliberations be conducted openly." NRS 241.010(1); *see McKay v. Bd. of Supervisors*, 102 Nev. 644, 651 (1986). A "meeting" is a "gathering of members of a public body at which a quorum is present, whether in person or by means of electronic communication, to deliberate toward a decision or to take action . . ." NRS 241.010(3)(a)(1). A quorum may be established through a series of gatherings involving members of the public body. NRS 241.010(3)(a)(2). In short, a public body may not deliberate or take action outside of a public meeting whether a quorum of the public body meets in person or the thoughts and opinions of members of a public body are shared amongst the members through serial meetings or communications where no individual meeting or communication involves a quorum of members.

The OAG was not provided with and was unable to find any evidence demonstrating the Panel approved the 2014 and 2016 reports in a public meeting. Rather, the e-mail you attached to your complaint appears to show the Panel violated the OML by approving the 2014 and 2016 reports outside of public meetings. However, consistent with OAG policy that limits investigations into alleged OML violations to complaints filed, absent extenuating circumstances, within 120-days of the alleged violations, the OAG declines to initiate a formal investigation into the matter or to make formal findings due to the age of the violations.¹ The OAG does caution the Panel not to deliberate or take action outside of its public meetings.

With regards to the 2018 report, the OAG does not find a violation of the OML. Your allegation with regards to the 2018 report is that the Panel is "about to violate the NRS again as the 2018 LCB report is due July 1 and the Oversight Committee has no scheduled meetings." Subsequent to you filing your complaint, the Panel noticed a meeting including an agenda item for approval of the 2018 report. The Panel held this meeting on March 29, 2018. In its response, the Panel submitted affidavits from its

¹ You also acknowledge the timeliness issue regarding the 2014 and 2016 reports by stating in your complaint that "Complainant recognizes that the past violation is 'water under the bridge.'"

Mr. Jeffrey D. Church
Page 3
August 1, 2018

members with each affidavit stating no discussions on the 2018 report were held between the members prior to the meeting. The minutes of this meeting reflect the Panel considered the draft 2018 report included in the meeting materials and took action to approve the draft report. The evidence indicates the Panel approved the 2018 report without deliberating or taking action outside of a public meeting and, thus, the OAG does not find an OML violation with regard to the 2018 report.

Your complaint also alleges violations by the Panel of NRS Chapters 393 and 350 and NRS 387.335. The OAG does not consider these allegations as they are not within the scope of review by the OAG on an OML complaint.

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 the file regarding this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: /s/ John S. Michela
JOHN S. MICHELA
Senior Deputy Attorney General
Gaming Division
(775) 687-2118

JSM:sad
c: Neil A. Rombardo, Chief General Counsel, WCSD