



STATE OF NEVADA  
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July 30, 2013

Vicky L. Maltman  
5420 Lupin Drive  
Sun Valley, Nevada 89433

Re: Open Meeting Law Complaint / AG File No. 13-018  
Sun Valley General Improvement Board

Dear Ms. Maltman:

We have investigated your Open Meeting Law (OML) Complaint that alleges the Sun Valley General Improvement District violated the OML at its May 16, 2013, public meeting. The Complaint alleges that a change to the final budget that added money to an existing Community Beautification Project (graffiti abatement) line item had been secretly arranged prior to the meeting. Such allegation alleges a violation of NRS 241.015(2)(a)(2) (serial communication or walking quorum).

We investigated the allegation of your OML Complaint that the Board members of the Sun Valley General Improvement District discussed and or pre-arranged their vote on a budget line item amendment prior to the Board meeting on May 16, 2013. We reviewed the agenda and minutes of the May 16th public meeting. We also asked for and received the audio of the meeting, and an affidavit from each of the four members of the Board who attended the meeting that evening and voted on the motion to add money to the budget line item.

Two issues need to be resolved. First, did a quorum of the Board discuss the line item amendment regarding graffiti abatement and secondly, was there any significance to the apparent solicitation between the Chair and Trustee Barstow for a second to Trustee Severt's motion to add money to the existing graffiti abatement line item.

After review of the affidavits from each of the Trustees, the meeting minutes, and the audio recording, we find that there was no OML violation either before or during the vote on Trustee Severt's motion to add money to the graffiti abatement line item.

### Discussion

Trustee Severt and Ainsworth acknowledged a communication between themselves, which occurred prior to the May 16th meeting regarding the amendment of money to the final budget for the graffiti abatement line item. However, two Trustees are less than a quorum of the Board, which makes the communication outside the ambit of the OML. Trustee Ainsworth, after being apprised of the nature of Trustee Severt's proposed motion to amend the final budget, suggested that the May 16th meeting was the proper time to address the issue. Their affidavits do not indicate any further communication about the matter, nor does it appear that a verbal commitment had been made between them. Neither Chairwoman Ainsworth nor Trustee Severt mentioned Trustee Severt's proposed motion to move monies into the graffiti abatement line item or the conversation between them to any other Trustee, which is confirmed by review of their affidavits.

The allegation of serial communications is serious allegation under the OML. Serial communication invites abuse if it is used to accumulate a secret consensus or vote of the members of a public body. Any method of meeting where a quorum of a public body discusses public business, whether gathered physically or electronically, is a violation of the OML. Nevada is a "quorum state," which means that the gathering of less than a quorum of the members of a public body is not within the definition of a meeting under NRS 241.015(2). Where less than a quorum of a public body participates in a private briefing with counsel or staff prior to a public meeting, it may do so without violating the OML. *Dewey v. Reno Redevelopment Agency*, 119 Nev. 87, 99, 64 P.3d 1070, 1078 (2003).

The Nevada Supreme Court also said that even in the absence of a quorum, members of a public body may privately discuss public issues or even lobby for votes. *Del Papa v. Board of Regents*, 114 Nev. 388, 400, 956 P.2d 770, 778 (1998).

We believe that Ms. Severt and Chairwoman Ainsworth were discussing public business, but the conversation was well within the OML allowance for such communications as interpreted by the Supreme Court.

The second issue raised in the Complaint calls into question the apparent solicitation of a "second" from Trustee Barstow to Trustee Severt's motion to add money to the graffiti abatement line item.

Our review of Trustee Ainsworth and Trustee Barstow's affidavits lets us easily conclude that during the vote on the motion, nothing improper was intended and certainly nothing occurred that violated the OML or even suggested that a serial quorum communication had occurred before the meeting.

Chairwoman Ainsworth explained that her usual habit at meetings is to make eye contact with each Trustee if an immediate second has not been made to any motion to make sure each Trustee heard and understood the motion and to give them the opportunity to make a second to the motion. Chairwoman Ainsworth recalls looking left to Trustee Reinhardt who remained silent, then she looked to her right and may have called Trustee Barstow's name since he was not looking at her. He then seconded the motion.

Trustee Barstow explained that he had been unaware of Trustee Severt's proposed motion. His attention following the motion was simply on thought about where the money would come from to support the motion. He seconded the motion only because it would further additional discussion; his "second" was not intended as a commitment to a position on the motion. When Trustee Barstow learned that the money's source was reserves he was relieved and on that basis he voted to approve the motion.

These facts explain the hesitancy of Trustee Barstow's "second." There was no prior commitment among any of the Trustees regarding the augmentation of the graffiti abatement line item with additional money from SVGID reserves.

There was no violation of the OML. We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

By:



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cc: Maddy Shipman, Esq., Counsel to Sun Valley General Improvement District  
Sun Valley General Improvement District board members:  
Sandra Ainsworth, Chairperson  
Garth Elliott, Vice Chair  
Joseph Barstow, Treasurer  
Margaret Reinhardt, Secretary  
Susan Severt, Trustee