



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

100 North Carson Street
Carson City, Nevada 89701-4717

ADAM PAUL LAXALT
Attorney General

WESLEY K. DUNCAN
Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

July 24, 2015

Via First Class Mail

Peggy L. Bowen
970 Manzanita Lane
Reno, Nevada 89509

Re: Open Meeting Law Complaint, A.G. File No. 13897-145 regarding
The Board of Public Employees' Benefits Program

Dear Ms. Bowen:

On April 23, 2015, you submitted an Open Meeting Law (OML) complaint to this office. The complaint alleges that the Public Employee's Benefits Program Board of Directors, a public body, violated the Open Meeting Law because the name of the person who was appointed as interim director was not on the agenda.

Unlike a recent case this office investigated involving the Washoe County School District Board of Trustees (WCSD), in which the Trustee's meeting agenda item 7.02 did not provide notice that the Trustees would appoint a permanent district superintendent;¹ PEBP's agenda item stated that an interim director would be appointed.²

The complainant in the WCSD case alleged that the vote and selection of a permanent superintendent violated Nevada Revised Statute (NRS) 241.020(2)(d)(1)

¹ Trustees' agenda item 7.02 states: "DISCUSSION ON SUPERINTENDENT SEARCH (FOR DISCUSSION AND POSSIBLE ACTION)." During discussion of this agenda item, the Trustees eschewed discussion of a formal search and instead voted twice in a process that selected Traci Davis as permanent superintendent.

² PEBP's agenda item #3 states: "Discussion and possible action regarding appointment of Interim Executive Officer and recruitment of permanent Executive Officer. (FOR POSSIBLE ACTION).

and (2), which require each agenda to provide a clear and complete statement of topics scheduled to be discussed during the meeting.³

We investigated whether PEBP's agenda item was clear and complete and also whether the name of the person should have been included in the agenda item.

The Office of the Attorney General (AGO) has jurisdiction to investigate Open Meeting Law complaints. NRS 241.039. The AGO may sue a public body to void an action, or may sue a person or a public body for injunctive relief in a court of competent jurisdiction to require compliance with the OML. Civil remedies including monetary fines are also authorized by statute. NRS 241.037 and NRS 241.040. The Attorney General may issue Findings of Fact and Conclusions of Law following an investigation. NRS 241.0395.

NRS 241.020 requires a clear and complete statement of the topics to be discussed in the public meeting. PEBP's agenda met this requirement because the topic to be discussed was the appointment of an interim executive director. The item was an action item as well.

The only other issue is whether the name of the person to be appointed should have been on the agenda. After review of the audio it was obvious that the person to be appointed was in the audience. Nevertheless, the OML did not require that the name of the interim executive director be on the agenda, although placing her name on the agenda would have been even more transparent.

The legal reason that her name was not required to be on the agenda was that NRS 241.020(2)(d)(5) requires that a person's name must be on the agenda if "during any portion of the meeting the public body will consider whether to take administrative action against a person" The appointment of a person to public office or as the executive director of PEBP's cannot be considered to be action taken against a person.

³ NRS 241.020(2)(d)(1)–(3) specifies the fundamental requirements of a public body's agenda:

(d) An agenda consisting of:

(1) A clear and complete statement of the topics scheduled to be considered during the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term "for possible action" next to the appropriate item or, if the item is placed on the agenda pursuant to NRS 241.0365, by placing the term "for possible corrective action" next to the appropriate item.

(3) Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken. . . .

Peggy L. Bowen
Page 3
July 24, 2015

This office sought an amendment in the 2015 Legislature to correct the statute's limited reach. We proposed substituting the word "regarding" for the word "against" in NRS 241.020(2)(d)(5). Our proposed amendment was approved, so that the statute now requires a name to be on the agenda "if, during any portion of the meeting the public body will consider whether to take administrative action regarding a person"

The Attorney General's bill S.B. 70 was approved on May 27, 2015. Since then, a person's name must appear in an agenda item if a public body's agenda item proposes to take administrative action regarding a person. This means the appointment of a public officer, or the appointment of a person that serves at the pleasure of the public body.

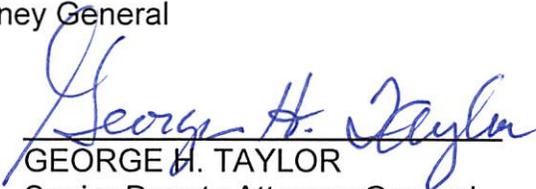
Finding no violation, we are closing our file on this matter. Thank you for your interest and for bringing this matter to our attention.

DATED this 24th day of July, 2015.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By:


GEORGE H. TAYLOR
Senior Deputy Attorney General
Bureau of Government Affairs
Open Meeting Law

Cc: Dennis L. Belcourt, Deputy Attorney General

Board Members:

Jacque Ewing-Taylor
Ana M. Andrews
Donald Bailey
Christopher R. Cochran
Jeffery A. Garofalo
Rosalie Garcia
Ashok Mirchandani
Robert T. Moore
Judy Saiz