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October 30, 2014

Via First Class Mail

Elena Rodriguez-Malfavon
8036 Revolver Avenue
Las Vegas, Nevada 89131

Re: Open Meeting Law Complaint, A.G. File No. 14-012
Clark County School Board of Trustees

Dear Ms. Rodriguez:

On February 27, 2014, the Clark County School Board of Trustees (Trustees) met in a public meeting. Ms. Rodriguez-Malfavon, spoke during the first public comment period. She wanted to bring to the Trustees attention a recent Las Vegas Review Journal (R.J.) Article authored by Trevon Milliard on February 16, 2014, in which the reporter reviewed the issue of whether the Trustees could or would strip the Superintendent of the power to promote and transfer administrators within the district. She asked whether these reclassifications, promotions and transfers were posted so that the Trustees and the public would know where the money was being spent during this time of need following the great recession.

Ms. Malfavon also discussed a R.J. Article from January 7, 2011, (James Haug, reporter) which reported that former Superintendent Dwight Jones rescinded pay raises due to reclassification that had been approved by the outgoing Superintendent for six District Administrators. She named several of these administrators aloud as these names had appeared in the Review Journal Article.

Her complaint alleges that the Trustees violated the Open Meeting Law (OML) when subsequent to their February 27th meeting, they revised public speaking guidelines which are included on every agenda. It's alleged this was action taken without having provided proper notice to the public, and that the Trustees deliberated and took action on a matter not on the agenda, so that there was no clear and complete agenda item (revision of public speaking guidelines).

During our investigation we asked for and received a response to the allegations in the complaint from Trustee's counsel. We also received and reviewed the audio/video recordings for the Trustee's February 27, 2014 meeting, and the audio/video recording of the Trustee's March 13, 2014 meeting. We also reviewed other RJ articles dated January 7, 2011, and another dated February 16, 2014 regarding the Superintendent's power to promote and transfer District administrators.

At the close of the second general period of public comment, under Agenda Item 9.01, and after Mr. Stephen Augspurger, Executive Directors of the Clark County Association of School Administrators, had commented on Ms. Malfavon's views about the R.J.'s article that reviewed the history of the Superintendent's power to promote and transfer District administrators, Trustees Linda Young, and Carolyn Edwards, discussed whether public speaking guidelines should be revised in light of Ms. Malfavon's use of administrator's names in her public comment. Superintendent Pat Skorkowsky quickly reminded the Trustees that district policy already included language protecting district employees.

Discussion

Nevada Revised Statute (NRS) 241.020(2)(d)(3) provides legislative authority for public bodies to discuss comments made by the public.¹ The Legislature deliberately included that phrase and it did so to allow discussion between the public body and the general public during public comment.

¹ **NRS 241.020 Meetings to be open and public; limitations on closure of meetings; notice of meetings; copy of materials; exceptions.**

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

(I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting; or

(II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

The phrase: "... and discussion of those comments." Was inserted into NRS 241.020 in the 1991 legislature. Prior to 1991, counsel for the Clark County School District (District) had advised Trustees that if they engaged in discussion with the public and stated their position, in effect, they would be reaching a consensus and deliberation toward a vote. Counsel also advised them not to respond to public inquiries during public comment period.

In 1991, the new counsel for the District disagreed with his predecessor arguing to the Legislature the law should be changed to allow discussion between a public body and the general public. He said that when his Trustees do not respond to the general public, they (the public) become very antagonistic and are upset by the absence of response.

Assembly Bill (AB) No. 252 was introduced to remedy the matter. Based on review of the legislative history of AB 252 in 1991, the Legislature intended to encourage public bodies to engage in discussion with members of the public. There's nothing in the legislative history to suggest that discussion between a public body and the general public be limited to matters on the agenda.

As long as a quorum of the public body does not deliberate (i.e. make a choice) during discussion with members of the public during the public comment period, then there is no violation.

NRS 241.015(2) states that deliberation occurs when a quorum of the public body collectively discusses the reasons for or against an action. Deliberation does not occur when less than a quorum of the public body engages in a "discussion" of a matter within the jurisdiction or control of the public body; a quorum must be involved. A response to a request from the public to know where a member of the public body stands on a public issue is not deliberation. A general discussion with the public about public issues during public comment is low risk. Members of the public body are never obliged to comment should they not wish to. See Attorney General's Opinion File No. 05-033.

Conclusion

The discussion among two Trustees did not rise to the level of deliberation or action as Superintendent Skorkowsky reminded the Trustees that District policy already included language that could simply be inserted into the public speaking guidelines before the Trustee's next meeting. No deliberation or action was taken by the Trustees at this meeting or at the subsequent meeting regarding public speaking guidelines.

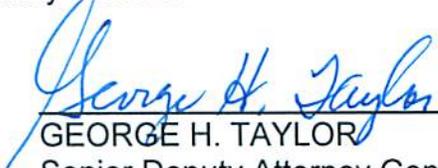
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We are closing our file on this matter. Thank you for bringing this matter to our attention.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



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GHT:

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