



STATE OF NEVADA
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November 14, 2014

Via United States Mail

Founders Academy of Las Vegas
William Richard Moreno, Chairman
4025 N. Rancho Drive
Las Vegas, Nevada 89130

Re: Open Meeting Law Complaint, AG File No. 14- 028

Dear Mr. Moreno:

Founders Academy of Las Vegas (Founders) is a charter school sponsored by the Nevada State Public Charter School Authority. Founders Academy is governed by a Board. The Board is a public body subject to Nevada's Open Meeting Law (OML).

Heather Howell alleges she requested copies of notices, minutes and supporting materials for the Founders Academy Board Meetings. NRS 241.020. She alleges she never received a response to her request made on July 2, 2014 and again to her request on July 30, 2014. Ms. Howell complains to this office that as a member of the public she has the same right to board notices, minutes and supporting materials as any other member of the public.

FACTS

Ms. Howell requested that notice of Founders Academy Governing Board meetings be mailed to her in accordance with NRS 241.020. Founders Academy did not respond to her requests, nor did it mail to Ms. Howell the requested board public meeting documents. On August 1, 2014, Founder's Governing Board posted minutes of two meetings – June 19, and July 8, 2014, on its webpage.

Founders acknowledge that it did not respond to Ms. Howell's request. It defends its failure to send requested notices, agendas and supporting materials to Ms. Howell because of a recent dispute between Founders and Rite of Passage. Rite of Passage had been contractually serving Founders as the school's Educational Management Organization (EMO). Because of the dispute Rite of Passage terminated its EMO contract with Founders and notified Founders of the termination.¹

Founders believe that the Rite of Passage's Chief Operating Officer Laurence Howell's (the husband of Heather Howell) instruction to Founders not to communicate with Rite of Passage included Ms. Howell's request for notice, minutes and supporting materials. But the meeting minutes for July 8, 2014 provided no evidence that the Governing Board considered such an interpretation.² In fact such an interpretation is clearly contraindicated because the Board Chairman discussed possible litigation as the basis for the non-communication instruction, not the OML. Founder's belief is mere speculation and unsupported by meeting minutes, correspondence or other corroborating evidence that Rite of Passage even intended such an interpretation.

¹ Excerpt from approved minutes of Founders June 19, 2014 meeting:
Item 10 (revision of EMO agreement) was discussed. Bob Beers moved that the Board accept the termination/resignation of Rite of Passage and that Mark Hesiak continue to attempt to negotiate terms of separation. Lawrence Howell stated for the record that management had acted under a 5% contract for approximately a year, the Board asked Rite of Passage to increase its scope and Rite of Passage presented a contract at 7.5% reimbursement, which the Board agreed to. There was then some discussion or dispute over the term of that second contract, after which Rite of Passage proposed a fee-for service agreement. Chairman Moreno asked for a second on Bob Beers' motion. Rosa Kubala seconded the motion. Chairman Moreno stated that the situation was akin to a failed marriage and the next step was to negotiate an agreement. Lawrence Howell stated for the record that Rite of Passage had continued to provide services even after the termination email. Chairman Moreno agreed, and thanked Heather Howell and CJ for their continued efforts. The discussion ended and the motion carried unanimously.

² Excerpt from approved minutes of Founder's July 8, 2014 public meeting:
Agenda Item 13. Granting Executive Committee authority to retain a law firm to represent Founders. Mark Hesiak exited the room for Item 13 and did not participate in a motion or a vote. Chairman Moreno explained that this item is in preparation for a possible lawsuit with a former management company. **Bob Beers stated that our EMO that resigned has told us that they only want us to communicate with them through their attorney and that hopefully we would be able to discuss prior to any legal action.** However, just in case, we should be ready to hire counsel if they file a lawsuit. This agenda item would get the board authorization to hire legal representation if we need it. Chairman Moreno explained that 7 days to respond to a lawsuit is customary and with the requirements to schedule a Board Meeting, and retain an attorney, we would likely miss the deadline. Jeff Geihs so moved for the Executive Committee to have authority to hire legal representation. Rosa Kubala seconded. The motion carried unanimously.

ANALYSIS

Founders interpreted Rite of Passage's instruction that Founders only contact its Arizona attorney to apply to much more than the dispute about the contractual relationship between Founders and Rite of Passage. It is more likely that it was only the contractual dispute with Rite of Passage that the Chief Operating Officer's instruction applied. No facts were uncovered in the investigation suggesting that Rite of Passage's instruction applied to any matter other than contractual relation.

Founders interpreted the Rite of Passage instruction to apply to the public's right to request and receive public body notice, agendas, minutes, and supporting materials. There was simply no factual or legal evidence to support this interpretation, and even if Rite of Passage intended its instruction to apply to request for public records under the OML, the instruction is void as applied to the OML.

The OML requires that in addition to posting the notice in at least three prominent places in the jurisdiction as well as the principal office of the public body the **Board must mail a copy of the notice to any person who has requested notice of meetings.** NRS 241.020(3)(c). A public body should implement internal record keeping procedures to keep track of those who have requested notice. .

Provision of minutes and supporting materials to the public is also described under the OML. Minutes are public records and must be provided to the public at no charge. "Minutes or audio recordings of the meetings must be made available for inspection by the public, and a copy of the minutes or audio recordings must be made available to a member of the public upon request at no charge, within 30 working days after the adjournment of the meeting at which taken." NRS 241.035(2).

Supporting materials for a public body's public meeting must be made available to the public. This office has always interpreted the requirement to mean the public body must make supporting materials available over the counter to the requester. For both minutes and supporting materials there is no requirement under the OML that they be mailed to the requester, unless the public body chooses to provide these documents by electronic mail. Even if a public body uploads the documents by electronic mail it still must ask the requester if it will accept electronic delivery. The requester may refuse the offer to obtain a copy by electronic mail and choose to obtain a copy "over the counter" rather than by electronic mail.

Each public body is required to post the name and contact information of the person designated by the public body from whom the public may request supporting materials and the location at which the materials may be obtained. NRS 241.020(2)(c).

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The OML now requires all public bodies to post its Notice of public meeting on the State's website. NRS 232.2175.

CONCLUSION

Whether Ms. Howell is now employee of Rite of Passage has no bearing on the issue presented. The Legislative intent embodied in the OML is to provide any member of the public who requests notice, minutes of meetings and supporting materials with the right to obtain those documents. No one and no agreement may interfere with that right.


We do not believe that sanctions or penalties are necessary following our investigation of this violation. Should the Board be concerned about the possibility of litigation and the risk that discussion in an open meeting might disclose litigation strategy or issues to the public, it should be aware that the OML allows non-meetings to be held at any time if the public body's counsel only discusses litigation or potential litigation. NRS 241.015(3)(b)(2).

We will only warn Founders to make the notice, minutes and supporting materials available to the public in accordance with the OML and this opinion.

Sincerely,

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Attorney General

By:



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