



STATE OF NEVADA
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January 16, 2014

Via United States Mail

Lee (Janet) Houts
238 Edith Street
Dayton, Nevada 89403

Re: Open Meeting Law Complaint / AG File No. 13- 037
Mark Twain Community Center Advisory Board

Dear Ms. Houts:

We have investigated your Open Meeting Law (OML) complaint which alleges an Open Meeting Law violation by the Mark Twain Community Center Advisory Board Board). It is alleged that the five-member Advisory Board, recently appointed by the Storey County Board of Commissioners (Commissioners), have not responded to your public records request for public records, agendas and minutes of its previous meetings. Your request for the agenda and minutes of the September 18, 2013 board meeting was submitted to the Board on October 24, 2013.

FACTS

We have reviewed the agenda and minutes of the Storey County Board of Commissioners (BOC) meeting of April 2, 2013, specifically item #15. The BOC appointed five volunteers to the Mark Twain Community Center Advisory Board. The minutes do not reflect any other discussion than introductions of new members to the BOC.

This office has jurisdiction to investigate OML complaints and seek civil remedies against public bodies, including injunctive relief; to require compliance with the OML, or to prevent violations of the OML. NRS 241.037; NRS 241.040.

Storey County (County) owns land in the Mark Twain area on which a fire station was built some years ago. A few years ago the County ceased manning the fire station but continued to store fire equipment there. Central Lyon County Fire District agreed

(through an interlocal agreement (NRS chapter 278) with Storey County to provide fire protection to the Mark Twain area of Storey County which resulted in the Storey County Fire Station (station) becoming only a storage building.

Storey County Commissioner Lance Gilman solicited the help of 5 volunteers from the Mark Twain area to look into finding a use for the vacant structure. These individuals proposed to turn the vacant parts of the building into a community center. On April 2, 2013, five people from the Mark Twain area were appointed by the Board of Storey County Commissioners to convert the vacant structure into a Community Center.

Since early 2013, the process of turning the building into a community center continues. The group of volunteers proposed that they gain IRC 501(c)(3) status. Once that is accomplished the County proposes to turn control of the structure over to them through an agreement approved by the BOC.

Storey County pays for electricity and heating for the structure, which still stores firefighting equipment. The County owns the land and structure and it pays for internet access for the Community Center's website, but this is the extent of the involvement by the County with the group known as the Mark Twain Community Center Advisory Board. When vacancies occur on the Board, as they have recently, the Board, and not the BOC appoints replacement members.

The Board records meetings. From the meeting's audio recording a volunteer drafts minutes. Board meetings are recorded voluntarily. The Chairman of the Advisory Board told this office that as the Center grows and gets organized its agendas and minutes will be posted online. There are no minutes for the September 18th meeting requested by complainant. During our discussion with the Chairman of the Board, he told us he was absent during that meeting and is unsure if any recording or minutes were ever prepared for that meeting.

DISCUSSION

Whether the Advisory Board must obey public records requests and provide copies of agendas and minutes of prior meetings depends on whether the Board is a public body as defined in NRS 241.015.

The Open Meeting Law is broadly interpreted by the Nevada Supreme Court so that citizens are not deprived of the opportunity to witness their government in action. In *Dewey v. The Redevelopment Agency of the City of Reno*, 119, Nev. 87,94, 64 P.3d 1070,1075 (2003) the Court's citing an Attorney General's opinion said that "a statute promulgated for the public benefit such as a public meeting law should be liberally construed and broadly interpreted to promote openness in government."¹

¹ Op.Nev. Att'y Gen. No. 85-19 (Dec. 17, 1985)

In prior opinions, this office interpreted the statutory definition of public body to require that it must be an "administrative, advisory, executive or legislative body of the state or a local government", which means that the body must (1) owe its existence to and have some relationship with a state or local government, (2) be organized to act in an administrative, advisory, executive, or legislative capacity, and (3) must perform a government function. It must also expend or disburse or be supported in whole or in part by tax revenue, or advise or make recommendations to any entity which expends or disburses, or is supported in whole or in part by tax revenue. *See Nevada Open Meeting Law Manual, 11th Edition, June 2012, § 3.01; see also Open Meeting Law Opinion OMLO 99-05 (January 12, 1999); OMLO 2006-06 (April 3, 2000).*

In 2011 the Nevada Legislature amended NRS 241.015 to mandate that the definition of public body also requires it be created through of seven methods. NRS 241.015(4)(7) allows the governing body of a political subdivision of this State to create a public body by resolution or an action. The manner of creation of a public body assumes an important role in the definition of public body.

In *OMLO 2000-06* this office determined that a nonprofit organized as Carson City Senior Services Center did not perform a governmental function. A community center appears to an analogous nonprofit for purposes of analyzing whether a nonprofit community center is a governmental function.

In *2002 – 014*, the Storey County Cemetery Board was determined to be a public body; however the Storey BOC took an active involvement in the creation, duties and authority of the Cemetery Board and also approved its scope of work. Scope of work included making recommendations to the Commission. In *OMLO 2000-06* we stated that "to the extent a group is appointed by a public body and is given the task of making decisions for or recommendations to the public body, the group would be governed by the Open Meeting Law." Attorney General Open Meeting Law Manual, §3.04, 11th Ed. 2012). We can not find any evidence that the Mark Twain Community Center Advisory Board was actually tasked with any duty to advise the BOC or to make recommendations to the BOC.

CONCLUSION

We conclude that Mark Twain community center governing body is not a public body, although our decision is close. Applying the factors this office has utilized since 1999 (set out above) to the Board, we find that: there has been very little BOC involvement in the activities or organization of the Community Center despite Commissioner Gilman's early encouragement and solicitation of the five volunteers. The community center volunteers do not make recommendations to the BOC. The current county funding/support at this time consists only of paying the electric bills and internet service bills for the county's building, which is a cost that the county would have to pay (except for internet service) regardless of whether the Community Center

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occupied it; however, the County may make further financial support later as it does for other Storey county nonprofits. Use of the building as a community center is not a governmental function, even if it eventually becomes a nonprofit. The BOC invited volunteers to determine how to use the building, it even appointed the five volunteers to serve as a "Board," but on balance the County did not create an Advisory Board to the BOC. At best, it was an informal arrangement without the stamp of BOC resolution or other official action or involvement.

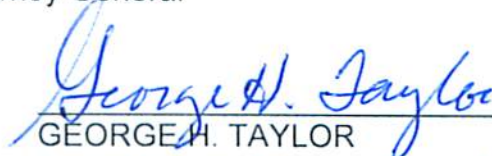
We conclude that the Board for the Mark Twain Community Center is not an Advisory Board created by resolution or action of the Storey County Board of Commissioners; however the Board appears to be ready to comply with the OML since it already records meetings and prepares minutes. Should it post its agendas three days before Board meetings as three places within the Mark Twain area it would comply with the OML. We encourage it do do so.

Thank you for bringing this matter to our attention.

Sincerely,

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Attorney General

By:



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Enclosures

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