

AARON D. FORD
Attorney General

KYLE E.N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



JESSICA L. ADAIR
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA

OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

May 31, 2022

Via U.S. Mail & Certified Mail

[REDACTED]

JayDee Porras-Grant

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[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-397
In the matter of Mineral County School District Board of
Trustees**

Dear Mr. Grant:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging violations of the Open Meeting Law (“OML”) by the Mineral County School District Board of Trustees (“Board”), related to its Superintendent’s Budget Committee.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The OAG’s investigation of the Complaints included a review of the following: the Complaint; the response filed on behalf of the Board; and an affidavit from former Mineral County School District Superintendent Karen Watson.

After investigating the Complaint, the OAG determines that the Superintendent’s Budget Committee is not a public body and that the Board did not violate the OML as alleged in the Complaint.

FACTUAL BACKGROUND

The Board has delegated to its Superintendent the responsibility to develop a District budget proposal to present to the Board. In furtherance of that responsibility, the Superintendent created a Budget Committee

comprised of school and District employees, parents and two Board members. The Budget Committee provides input to the Superintendent, who then makes a recommendation to the Board regarding the District budget.

A meeting of the Budget Committee was scheduled for March 17, 2021 but was canceled due to a power failure. Another meeting was scheduled for March 18, 2021 but was cancelled due to member unavailability. Agendas for the two planned March meetings were not posted in accordance with the OML.

The Complaint, filed on March 17, 2021, alleges that the Budget Committee is a public body and must comply with the OML. The Complaint references the March 17 meeting that was postponed and the scheduled March 18 meeting.

LEGAL ANALYSIS

The Mineral County School District Board of Trustees, as the governing body of a school district under NRS 386.110, is a public body as defined in NRS 241.015(4) and is subject to the OML.

The legislative intent of the OML is that actions of public bodies “be taken openly, and that their deliberations be conducted openly.” NRS 241.010(1); *McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit and policy behind NRS chapter 241 favors open meetings”). Public bodies working on behalf of Nevada citizens must conform to statutory requirements in open meetings under an agenda that provides full notice and disclosure of discussion topics and any possible action. *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).

As a preliminary matter, for the OML to apply to a gathering, the gathering must meet the definition of a meeting contained in NRS 241.015(3). A “meeting” requires a quorum of members of the public body together with deliberation and/or action. *Id.* Since the two meetings at issue here were canceled and the OAG does not possess evidence that a quorum of the Budget Committee met on either date, the OAG finds that the scheduled meetings did not violate the OML, regardless of whether the Committee is a public body. However, the Budget Committee did schedule subsequent meetings and the issue of whether it is a public body remains.

The term “public body” includes any “administrative, advisory, executive or legislative body of the State . . . which advises or makes recommendations to an entity which expends or is supported in whole or in part by tax revenue” if the body is created by one of the methods enumerated

in NRS 241.015(4)(a). In addition, subcommittees appointed by a public body must also comply with the OML if (1) a majority of the members of the subcommittee are members or staff members of the public body, or (2) the subcommittee is authorized to make a recommendation to the public body. NRS 241.015(4)(d); *In re Clark County School District Board of Trustees*, Nevada Attorney General Open Meeting Law Opinion (“OMLO”) 13897-265 at 5 (Oct. 5, 2018).

The OAG has repeatedly opined that the OML does not apply to internal staff groups or committees reporting to an individual. OMLO 13897-265 (working group was not a public body where members were chosen by the Superintendent and the final recommendation was made by the Superintendent and staff); *In re Clark County School District Board of Trustees*, OMLO 2010-02 (Apr. 7, 2010) (finding that an advisory committee created by and reporting only to the Superintendent, not the school board, was not a public body); *In re Fernley City Council*, OMLO 2009-02 (Aug. 12, 2009) (citizens recruitment committee not a public body because it was formed by the mayor and reported only to the mayor).

Here, the Budget Committee was not created by the Board, but by the Superintendent. Thus, it fails to meet any of the creation requirements contained in NRS 241.015(4)(a) and (4)(d)(1). While the Budget Committee was created to provide input on the district’s budget, an issue to be ultimately acted upon by the Board, the Budget Committee was not given the authority to make a recommendation to the Board. Similar to *In re Clark County School District Board of Trustees*, OMLO 13897-265, the Budget Committee was created solely to give input to the Superintendent who would ultimately make the recommendation. Thus, the OAG finds that the Budget Committee does not meet the requirements of NRS 241.015(4)(d)(2) and is not a public body.

The OAG cautions that the inclusion of two Board members on the Budget Committee could lead to an OML violation in the future. See *In re Skyland General Improvement District*, OMLO 13897-315 (Oct. 2, 2019) (“Even in the absence of a formal appointment process . . . , the Open Meeting Law applies to a committee with de facto authority from the parent public body to act on its behalf.”). Should the Board begin to treat the members of the Budget Committee as a subcommittee, they will need to comply with the OML.

CONCLUSION

Upon investigating the present Complaint, the OAG finds that the Mineral County School District Board of Trustees did not violate the OML. The OAG will close its file on this matter at this time.

Sincerely,

AARON D. FORD
Attorney General

/s/ Rosalie Bordelove
By: ROSALIE BORDELOVE
Chief Deputy Attorney General

cc: T. Jaren Stanton, Mineral County District Attorney
Office of the District Attorney of Mineral County
P.O. Box 1210
Hawthorne, NV 89415

Certified Mail No. 7020 0640 0000 7651 8862