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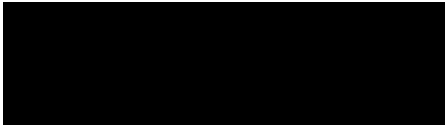
STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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

October 2, 2019

Via U.S. Mail and Electronic Mail

John Bosta



Re: Nye County Board of County Commissioners' – Open Meeting Law Complaint, O.A.G. File No. 13897-317

Dear Mr. Bosta:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging a violation of the Nevada Open Meeting Law (“OML”) by the Nye County Board of County Commissioners (“Board”). First, your Complaint alleges that agenda item No. 11 on the Nye County Board of Commissioners’ December 18, 2018, meeting agenda was not clear and complete and thus a violation of the OML. Your Complaint then alleges that your public records request was not completed to your satisfaction and finally that you believe that the fees quote (\$308.72) are too high based on the amount of work needed to provide the records.

The OAG has statutory enforcement powers under the OML and the authority to investigation and prosecute violations of the OML.¹ The OAG’s investigation of the Complaint included a review of the following: the Complaint, the Response to the Complaint from Nye County Board of County Commissioners, and the Board’s December 18, 2018 agenda.

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¹ See NRS 241.037; NRS 241.039 and NRS 241.040.

FACTUAL BACKGROUND

The Board is a “public body” as defined in NRS 241.015(4) and is subject to the OML. On December 18, 2018, you stated concerns with agenda item No. 11 at the Nye County Board of Commissioners’ December 18, 2018 meeting as you claimed it was not clear and complete as it must be under the OML. Your Complaint states that it was not clear and complete, as the public was not aware of which security plan element would be waived because the letter requesting the waiver was redacted.

DISCUSSION AND LEGAL ANALYSIS

1. Applicable Laws and Opinions

The Open Meeting Law concerns itself with meetings, gatherings, decisions, and actions obtained through the collective consensus of a quorum of the public body membership.²

2. Analysis

Your Complaint includes three alleged violations. They are: that agenda item No. 11 on the Nye County Board of Commissioners’ December 18, 2018 meeting agenda was not clear and complete and thus a violation of the OML, that your public records request was not completed to your satisfaction and finally that you believe that the fees quoted (\$308.72) are too high based on the amount of work needed to provide the records. As the second and third alleged violations are not complaints within the purview of the OML, they will not be addressed.

Your complaint alleges that agenda item No. 11 on the Nye County Board of Commissioners’ December 18, 2018 meeting agenda was not clear and complete and thus a violation of the OML. Your Complaint states that the agenda item was not clear and complete because the public is not aware of which security element was waived by the Board. You later requested “the scope of work, projects plans, project specification, calculations, design professionals associated with the project, cost estimates, bid documents, etc.” on December 26, 2018.³ Nye County responded to your request on December 31, 2018⁴ and stated that it did not “have any public records responsive to

² See also *Dewey v. Redevelopment Agency*, 119 Nev. 87, 64 P.3d 1070 (2003) (collective process of decision making must be accomplished in public).

³ See pg. 11 of your Complaint.

⁴ See pg. 22 of your Complaint.

your request” but did provide the September 12, 2018 letter from Nye Natural Medicinal Solutions, LLC⁵ and a land use application dated September 17, 2018⁶.

The Nevada Supreme Court has recognized that “[b]y not requiring strict compliance with agenda requirements, the ‘clear and complete’ standard would be rendered meaningless because the discussion at a public meeting could easily exceed the scope of a stated agenda topic, thereby circumventing the notice requirement.” Accordingly, “discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda topic.”⁷

In this case, item No. 11 of the December 18, 2018 agenda of the Nye County Board of Commissioners⁸ stated:

11. 11:00 – For Possible Action – Public Hearing, discussion and deliberation on WV-2018-000077: An application for a Waiver from Nye County Code 17.06.040.D.17 to allow a reduction of the security plan requirements for a Marijuana Establishment (production facility) located at 301 S. Oxbow Avenue, Pahrump, NV. Assessor Parcel Number 038-244-09. Eugene & Nelda Fay Toy Trust – Property Owner. Nye Natural Medicinal Solutions, LLC dba NuVeda LLC – Applicant.

Here, the public was informed that there would be possible action regarding the request for a reduction of the security plan requirements by Nye Natural Medicinal Solutions, LLC (a Marijuana Establishment). Based on a review of the minutes of that meeting, that is precisely what occurred. The fact that the supporting material provided to the public regarding the requested reduction of the security plan was redacted due to security reasons does not constitute a violation of OML. In fact, pursuant to NAC 453A.712 the information included in the security plan is likely confidential under Nevada law and thus prohibited from being disclosed. Therefore, as the discussion at the Nye County Board of Commissioners’ meeting did not exceed the scope of the agenda item and as the agenda item was clearly and completed stated, this allegation of the Complaint does not constitute a violation of the OML.

⁵ See pg. 23 of your Complaint.

⁶ See pg. 24 of your Complaint.

⁷ Schmidt v. Washoe County, 123 Nev. 128, 138, 159 P.3d 1099, 1106 (2007), abrogated by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 181 P.3d 670 (2008).

⁸ See Exhibit A.

CONCLUSION

Based on a review of the Complaint, the Response to the Complaint from the Nye County Board of County Commissioners, and the Board's December 18, 2018 agenda, the OAG has determined that the Board's actions did not violate the OML. Agenda item No. 11 of the December 18, 2018 Nye County Board of Commissioners' meeting was clear and complete. The allegations that Nye County did not reply to your public records request to your satisfaction and that the fees quoted (\$308.72) by Nye County are too high based on the amount of work needed are not violations of the OML. Having determined that no violation of the OML occurred, the OAG will close the file regarding this matter.

AARON D. FORD
Attorney General

By: 

DAVID M. GARDNER
Senior Deputy Attorney General

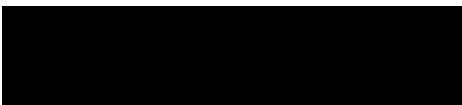
cc: Marla Zlotek, Esq., Counsel to
Nye County Board of County
Commissioners

John F. Bosta
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CERTIFICATE OF MAILING


I hereby certify that on the 10th day of October, 2019, I served the foregoing letter by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, Certified Mail, addressed as follows:

John Bosta


Certified Mail No. 7009 3410 0002 3251 6670

Marla Zlotek, Esq.
Office of the Nye County District Attorney
P.O. Box 39
Pahrump NV 89041

Certified Mail No. 7009 3410 0002 3251 6687


An Employee of the
Office of the Attorney General
State of Nevada