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September 16, 2019

Via U.S. Mail and Electronic Mail

Debra Shaffer-Kugel, Executive Director
Nevada State Board of Dental Examiners
6010 S. Rainbow Blvd, Building A, Suite 1
Las Vegas, NV 89118
dashaffer@nsbde.nv.gov

**Re: D. Kevin Moore, Board Member – Open Meeting Law
Complaint, OAG File No. 13897-321**

Dear Ms. Shaffer-Kugel:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging a violation of the Open Meeting Law (“OML”) by D. Kevin Moore DDS (“Moore”), a member of the Nevada State Board of Dental Examiners (“Board”). Your Complaint alleges that on February 14, 2019 Moore sent an email to the entire Board, the Executive Director and the Las Vegas Dental Association. This email discussed the proposed postponement of the Board meeting scheduled for February 22, 2019 with a quorum of the Board and you believe that the email constituted “deliberation” as set forth in NRS 241.015.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML.¹ The OAG’s investigation of the Complaint included a review of the following: the Complaint and the documents attached thereto.

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¹ See NRS 241.037; NRS 241.039 and NRS 241.040.

FACTUAL BACKGROUND

The Board² is a “public body” as defined in NRS 241.015(4) and is subject to the OML. On February 14, 2019, the members of the Board received an email from the Las Vegas Dental Association that is in active litigation with the Board. Later that day, Moore sent an email to the entire Board requesting that the Board’s meeting scheduled for February 22, 2019 be postponed and asking a quorum of the Board if they are in agreement.

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.³

2. Analysis

Your Complaint alleges that on February 14, 2019, Moore sent an email to the entire Board. This email discussed the postponement of the next Board meeting scheduled for February 22, 2019 with a quorum of the Board and you believe that the email constituted “deliberation” as set forth in NRS 241.015.

Before the OML is triggered, a “meeting” must occur. NRS 241.015(3)(a)(1) and (2) define a “meeting” as:

- (1) The gathering of members of a public body at which a quorum is present, whether in person or by means of electronic communication, to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.
- (2) Any series of gatherings of members of a public body at which:
 - (I) Less than a quorum, whether in person or by means of electronic communication, is present at any individual gathering;

² While Moore cannot by himself violate the OML as he is not a public body, this response is based on the OAG investigation of whether the Board has violated the OML.

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

- (II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and
- (III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

Based on the evidence provided in the Complaint, a gathering of a quorum of the members of a public body were present by means of electronic communications so the focus of this analysis will be whether deliberation occurred.

Under NRS 241.015(2), “deliberate” means “collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision.” See *Dewey v. Redevelopment Agency*, 119 Nev. 87, 97, 64 P.3d 1070, 1077 (2003) and *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, 69 Cal.Rptr. 480 (Cal. Ct. App. 1968)

“Deliberation . . . connotes not only collective discussion, but the collective acquisition or the exchange of facts preliminary to the ultimate decision.” 69 Cal.Rptr. at 485.⁴

Necessarily, for deliberation to occur there must be communication between the members of the public body. The evidence provided shows that there was no communication between the members of the Board except for the initial email from Moore. No other member of the Board examined, weighed or reflected upon the reasons for or against Moore’s request nor was there a collective discussion or exchange of facts preliminary to the ultimate decision. Therefore, as there was no collective discussion or any responses whatsoever to Moore’s initial email, there was no deliberation. As there was no deliberation, there could not have been a meeting and thus the OML would not apply.

Therefore, as no meeting was held nor did any deliberation occur, Moore’s action did not constitute a violation of the OML.

CONCLUSION

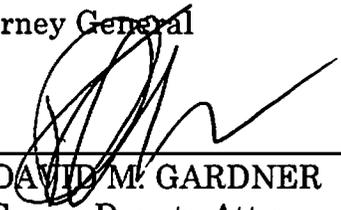
Based on a review of the Complaint and the attachments thereto, the OAG has determined that Moore’s actions did not violate the OML. Although a quorum of the Board received Moore’s email, no one responded thus

⁴ See p. 31,32, Nevada Open Meeting Law Manual (12th ed. 2016).

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preventing deliberation and a meeting from occurring. As no meeting occurred, there was no violation 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: D. Kevin Moore, DDS

CERTIFICATE OF SERVICE

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:

Debra Shaffer-Kugel, Executive Director
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6010 S. Rainbow Blvd, Building A, Suite 1
Las Vegas, NV 89118

Certified Mail No. 7009 3410 0002 3151 6694

D. Kevin Moore, DDS
Debra Shaffer-Kugel, Executive Director
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