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OFFICE OF THE ATTORNEY GENERAL

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

April 14, 2021

Via Certified Mail

Steven Cohen
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-383
In the matter of Nevada Commission on Autism Spectrum
Disorders – Workforce Development Subcommittee**

Dear Mr. Cohen:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) filed on December 18, 2020 alleging violations of the Open Meeting Law (“OML”) by the Workforce Development Subcommittee (“Subcommittee”) of the Nevada Commission on Autism Spectrum Disorders (“CASD”) and under the State of Nevada Department of Health and Human Services Aging and Disability Services Division (“ADSD”)¹ related to their alleged failure to provide proper notice under the OML for their December 11, 2020 meeting.

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 Complaint included a review of the following: the initial Complaint dated December 18, 2020; the supplemental letter by Mr. Cohen dated December 18, 2020; the Subcommittee’s website²; and the CASD/Subcommittee’s response to the Complaint. The OAG further had telephonic communications with CASD’s counsel regarding the CASD’s response.

¹ Mr. Cohen’s Complaint lists the “Aging and Disability Services Division – Autism Commission Subcommittees” as the entity against whom the Complaint was made.

² The website viewed by the OAG for this Complaint was http://adsd.nv.gov/Boards/Autism/Steering/Workforce_Development/.

After investigating the Complaint, the OAG determines that the Subcommittee did not violate the OML, as alleged in the Complaint.

FACTUAL BACKGROUND

The Complaint asserts that the Subcommittee held a meeting on December 11, 2020 and that no notice and agenda was provided to the public as required by the OML. The CASD/Subcommittee asserts that CASD does not have a Workforce Development Subcommittee but rather a “Workforce Development Workgroup” (“Workgroup”).

As indicated by the Respondent, the purpose of the CASD’s Workforce Development Workgroup is “. . . to gather research information to submit to the CASD. The Workgroup does not vote on anything. Only two members comprise this Workgroup.” The two individuals who serve on the Workgroup are Chair Antonina Capurro and Member Trisha Lozano. Both Ms. Capurro and Ms. Lozano are also members of the CASD, and both were appointed by a vote of the CASD to serve on the Workgroup. The CASD notes that the Workgroup did not meet or have a meeting scheduled for December 11, 2020 but scheduled a meeting for December 4, 2020; however, the CASD asserts that no one attended the meeting and that the meeting did not actually occur.

LEGAL ANALYSIS

A. The Workforce Development Workgroup is a public body as defined under the Open Meeting Law.

The definition of a “public body” under the OML includes “any administrative, advisory, executive, or legislative body of the State or a local government consisting of at least two persons which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue.” NRS 241.015(4). The definition further includes a subcommittee or working group consisting of at least two persons who are appointed by a public body if a majority of the membership of the subcommittee or working group are members or staff members of the public body that appointed the subcommittee or the subcommittee or working group is authorized by the public body to make a recommendation to the public body for the public body to take any action. NRS 241.015(4)(d).

Here, the CASD noted that the specific purpose of the Workgroup was “to gather research information to submit to the CASD”. Further, the Workgroup is comprised of two members appointed by the CASD, namely Ms.

Capurro and Ms. Lozano. Accordingly, the CASD's Workgroup fits squarely in the OML's definition of a public body and must comply with the requirements of NRS Chapter 241 for its meetings.³

B. Because no meeting took place on December 11, 2020, there was no violation of the OML.

The OML applies to meetings of public bodies and requires that they be open and public, and all persons must be permitted to attend any meeting of the public bodies. NRS 241.020(1). A meeting is defined under the OML generally as a gathering of a quorum of the public body to deliberate towards a decision or to take action on any matter over which it has supervision, control, jurisdiction or advisory power. NRS 241.015(3).

In this case, the OAG has insufficient evidence that a meeting occurred on December 11, 2020. Based upon the record before the OAG, the CASD positions that the Workgroup did not meet or have a meeting scheduled for December 11, 2020. Without a meeting of a public body, the OML is not applicable and there can be no violation. Notably, though, the CASD indicated that the Workgroup had a meeting scheduled for December 4, 2020 but that no one attended the meeting and that the meeting did not occur. Again, without a meeting of a public body, the OML is not applicable and there can be no violation.

Candidly, the CASD notes that it considered the December 4, 2020 meeting to be of a Workgroup and not of a Subcommittee, and noted that no action was taken and no agenda or notice was posted. In its response, the CASD acknowledged its misinterpretation of the OML that differentiated between a workgroup and a subcommittee, namely that the OML applied to subcommittees but not to workgroups and that such interpretation was noted in a draft Standard Operating Procedure. The CASD, through its counsel, admitted to this incorrect interpretation of the OML. Despite this incorrect interpretation of the OML, the CASD has indicated that it is reviewing of all Standard Operating Procedures to correct any inaccuracies prior to finalizing them and that it will consult with their counsel to assure that the provisions of the OML are followed. Therefore, no further action by the OAG is necessary at this time.

³ The CASD's response makes mention of another workgroup, namely its Funding and Insurance Workgroup. Should this Workgroup also comport with the definition of a "public body" under the OML, this Workgroup must also comply with the requirements under NRS Chapter 241.

Steven Cohen
Page 4
April 14, 2021

CONCLUSION

Upon investigating the present Complaint, the OAG finds that the Workforce Development Subcommittee of the Nevada Commission on Autism Spectrum Disorders did not violate the OML. The OAG will close its file on this matter at this time.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Justin R. Taruc
JUSTIN R. TARUC
Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2021, I served the foregoing by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, CERTIFIED MAIL addressed as follows:

Steven Cohen
[REDACTED]
[REDACTED]

Certified Mail No.: [REDACTED]

Nevada Commission on Autism Spectrum Disorders
Workforce Development Subcommittee
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/s/ Debra Turman
An employee of the Office of the
Nevada Attorney General