

AARON D. FORD
Attorney General

CRAIG NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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

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TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

Via U.S. Mail

James Slade
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-387
In the matter of Douglas County Board of Commissioners**

Dear Mr. Slade:

The Office of the Attorney General (“OAG”) is in receipt of your two complaints (“Complaints”) filed on or about January 22, 2021 alleging violations of the Open Meeting Law (“OML”) by the Douglas County Board of County Commissioners (“Commission”), during its January 4, 2021 and January 7, 2021 meetings, which may be summarized as follows:

ALLEGATION NO. 1: At its January 4 meeting, the Commission violated the clear and complete agenda requirement of the OML by allowing Commissioner Danny Tarkanian to exceed the scope of the noticed agenda topic related to each individual Commissioner’s goals and policies for Douglas County.

ALLEGATION NO. 2: At its January 4 meeting, the Commission violated the OML by allowing Commissioner Danny Tarkanian to publicly question the character and competence of two Douglas County School District employees without affording the employees the requisite notice under the OML.

ALLEGATION NO. 3: At its January 7 meeting, the Commission’s agenda item regarding a contract with Reno-Tahoe Construction, Inc., for the Gardner Residence Water Main Replacement Project violated the clear and complete agenda requirement of the OML.

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: (1) the Complaints and all attachments thereto; (2) the response filed on behalf of the Commission; (3) the video recording of the January 4, 2021 Commission meeting;¹ (4) the video recording of the January 7, 2021 Commission meeting;² and (5) prior OML decisions, case law, and portions of the Nevada Revised Statutes relevant to the Complaints.

After investigating the Complaints, the OAG determines that the Commission did not violate the OML's clear and complete requirement during its January 4 and January 7 meetings. Further, the OAG determines that the Commission did not violate the OML's notice requirement for the discussion of an individual's character or competence.

FACTUAL BACKGROUND

The Douglas County Board of County Commissioners is comprised of five (5) commissioners and is a "public body" as defined in NRS 241.015(4); therefore, the Commission is subject to the OML.

The Commission held a public meeting on January 4, 2021. Agenda Item No. 8 for the January 4 meeting read as follows:

8. For possible action. Discussion by each of the County Commissioners on their individual goals and priorities for Douglas County. (Patrick Cates) 30 minute presentation (approximate)

During Agenda Item No. 8, Commissioner Danny Tarkanian stated his goals and priorities for Douglas County. Commissioner Tarkanian expressed goals and priorities including maintaining safety precautions in Douglas County such as bike lanes and walking paths. Commissioner Tarkanian then expressed that he would like to be a leader to ensure the safety of students at Douglas High School, although acknowledging that the Commission did not oversee the School District financially. Commissioner Tarkanian further indicated that he had attended a Nevada Interscholastic Activities Association meeting and heard concerns that students were exposed to drugs, alcohol, and assault. Commissioner Tarkanian shared a personal story where his family

¹ The OAG reviewed the Commission's January 4, 2021 meeting at: https://douglascountynv.iqm2.com/Citizens/Detail_Meeting.aspx?ID=3078.

² The OAG reviewed the Council's November 4, 2020 meeting at: https://douglascountynv.iqm2.com/Citizens/Detail_Meeting.aspx?ID=3079.

had filed a complaint and felt that the Superintendent and former principal swept the allegations “under the rug.”³ No other Commissioner commented on or engaged in discussion of the statements made by Commissioner Tarkanian during the January 4 meeting.

Subsequently, the Commission held a public meeting on January 7, 2021. Agenda Item No. I under the Commission’s Consent Agenda for the January 7 meeting read as follows:

I. For possible action. Discussion to approve Contract Amendment No. 001 to a contract with Reno-Tahoe Construction, Inc. for the Gardner Residence Water Main Replacement Project and authorize the County Manager to execute the contract amendment. The proposed amendment increases the contract amount by \$19,645.66 from the original contract amount of \$49,750 for a final contract amount of \$69,395.66 for additional work performed during construction. (Rick Robillard)

As it related to Agenda Item No. I, Complainant Mr. Slade asked that the agenda item be pulled for further discussion and clarification, including for his assertion that the agenda item was not clear and complete. During the section of the meeting where the Commission called for approval of the agenda, the Commission voted to remove Agenda Item No. I from the consent agenda and place it on the Administrative Agenda for further discussion.

When Agenda Item No. I was called, Rick Robillard, Senior Civil Engineer of Douglas County Public Works made a brief presentation regarding the agenda item. Mr. Robillard indicated that the specific area where the work under the amendment took place was located at 131 US Hwy. 50 in an NDOT right of way in front of the Gardner residence, hence the name “Gardner Residence Water Main Replacement Project”. Mr. Robillard indicated that the amendment was to repair a portion of a leaky water main that was causing leakage into the adjacent residence.

Upon completion of the presentation by Mr. Robillard, a Commissioner asked Deputy District Attorney Doug Ritchie to provide the Commission advice on whether there was proper notice in the agenda item. During the meeting, Mr. Ritchie noted that the “clear and complete” requirement under the OML was a matter of interpretation. Mr. Ritchie counseled the Commission that generally, for a water line replacement, it was not required to indicate a specific location where a specific break may occur and that it was generally

³ This Opinion should not be interpreted to address questions of whether the Douglas County Board of Commissioners has oversight over the Douglas County School District.

sufficient to indicate a general location, such as a neighborhood. In this case, Mr. Ritchie noted that staff believed that the best description was the name of the adjacent property.

Ultimately, the Commission proceeded with voting on Agenda Item No. I, with four (4) commissioners approving the amendment and one (1) commissioner against.

LEGAL ANALYSIS

1. The Commission did not violate the OML at its January 4, 2021 meeting with respect to Agenda Item No. 8.

An agenda for a meeting of a public body must include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(2)(d)(1). The “clear and complete statement” requirement of the OML stems from the Legislature’s belief that “incomplete and poorly written agendas deprive citizens of their right to take part in government’ and interferes with the ‘press’ ability to report the actions of government.” *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence with the “clear and complete” standard for agenda items is required for compliance under the OML. *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” *Id.* at 155.

The instant Complaint asserts a violation of the clear and complete requirement when the Commission allowed Commissioner Tarkanian to “veer off-topic” from Agenda Item No. 8, which was agendized as “Discussion by each of the County Commissioners on their individual goals and priorities for Douglas County” as well as a failure to provide personal notice to the Douglas County School District Superintendent and former principal of the meeting.

A. Commissioner Tarkanian did not exceed the scope of the agendized topic.

Upon review of the evidence provided, including the videorecording of the January 4 meeting, the OAG finds insufficient evidence that an OML violation occurred or that Commissioner Tarkanian strayed off the topic of his goals and priorities for Douglas County. The agendized topic at issue related to discussions by the individual Commissioners regarding their individual goals and priorities for the County. As part of Commissioner Tarkanian’s statements, he indicated his priorities while on the Commission included “1) bringing a sense of cohesiveness amongst the Board members, 2) balancing the

infrastructure needs of Douglas County while at the same time maintaining the rural character of Douglas County, and 3) safety concerns.” Commissioner Tarkanian provided commentary as to these priorities and goals and did not exceed the scope of the agenda item. Accordingly, the OAG finds no OML violation occurred.

B. The Commission was not required to provide personal notice to the Douglas County School District’s Superintendent or former principal.

Under the OML, written personal notice must be provided to the person whose character, alleged misconduct, professional competence, or physical or mental health will be considered by the public body at a public meeting. NRS 241.033. The OAG has adopted a definition of “character” to include many personal attributes, including one’s general reputation, but also may include such personal traits such as honesty, loyalty, integrity, reliability, and such other characteristics, good or bad, which make up one’s individual personality. *See In re: Pershing General Hospital Nursing Home Board of Trustees*, OAG File No. 10-014, OMLO 2010-01 (February 25, 2010) (*citing* Nevada Open Meeting Law Manual (10th ed. 2005)). Additionally, the OAG has previously construed the word “competence” to mean “duly qualified[,] answering all requirements[,] having sufficient ability or authority[,] possessing the natural or legal qualifications[,] able[,] adequate[,] suitable[,] sufficient[,] capable[,] and] legally fit.” *Id.*

In a similar vein, the OAG has previously explained that although comments concerning an individual’s character are made by a public officer during a public meeting, such action does not necessarily rise to a violation of the OML. *See In re: Lyon County Board of Commissioners*, OAG File No. 10-062, OMLO 2011-01 (March 29, 2011). Instead, the analysis of whether the notice requirements under NRS 241.033 are triggered hinges on the focus of the meeting itself and review of what was actually discussed or considered by the public body. *Id.*; *see also* OMLO 2002-24 (May 28, 2003); OMLO 2001-44 (September 18, 2001); OMLO 2003-018 (April 21, 2003); and OMLO 2002-24 (May 28, 2003).

The Complaint asserts an OML violation stemming from Commissioner Tarkanian’s alleged discussion of the character, alleged misconduct, professional competence, or physical or mental health of the Douglas High School Superintendent and its former principal. The OAG reviewed the video recording of the January 4, 2021 meeting where the alleged violations occurred and finds that the evidence does not support the allegations that the Commission considered the character, misconduct, professional competence, or

physical or mental health of either the Douglas High School Superintendent or its former principal. The alleged violation occurred during an agenda item for discussion by each Commissioner on their individual goals and priorities for Douglas County. During this agenda item, while the OAG notes that Commissioner Tarkanian mentioned a prior complaint he and his family had filed that he believed was “swept under the rug” by the Douglas High School Superintendent and former principal, no discussion or deliberation commenced amongst the Commissioners, nor did any other Commissioner comment on the character, misconduct, professional competence, or health of either the Douglas High School Superintendent and former principal. Thus, the OAG does not find a violation of the OML.

2. The Commission did not violate the clear and complete requirement with respect to Agenda Item No. I at its January 7, 2021 meeting.

As noted above, the crux of the OML complaint pertaining to the Commission’s January 7, 2021 meeting deals with whether Agenda Item No. I regarding a contract amendment for additional work provided sufficient information to comport with the OML’s clear and complete requirement. The OAG finds that the agenda item sufficiently provided notice of the topics to be discussed at the Commission’s January 7, 2021 meeting.

On its face, the agenda provided sufficient information to alert the public of what topic would be discussed at the meeting. The agenda provided the name of the project (Gardner Residence Water Main Replacement Project); the name of the contractor (Reno-Tahoe Construction, Inc.); the amount of the original contract (\$49,750.00); the amount of the requested increase (\$19,645.66); and the total amount of the project (\$69,395.66). The Commission notes that it could not provide a specific address for the construction work, as the construction work was to be completed on a Nevada Department of Transportation right-of-way. Thus, it referred to the closest residential property by name (Gardner Residence) on the agenda and enumerated that address on the record during the meeting. Accordingly, the OAG finds no violation of the OML at the Commission’s January 7, 2021 meeting, as alleged.

CONCLUSION

Upon investigating the present Complaint, the OAG finds that the Douglas County Board of Commissioners 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/ Rosalie Bordelove
ROSALIE BORDELOVE
Chief Deputy Attorney General

cc: Mark B. Jackson, Douglas County District Attorney
Office of the District Attorney Douglas County
P.O. Box 218
Minden, NV 89423