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May 2, 2022

Via U.S. Mail & Certified Mail

[REDACTED]
Mrs. Andrea Westland
[REDACTED]
[REDACTED]
[REDACTED]

Re: Open Meeting Law Complaint, OAG File No. 13897-395, Ely City Council and Nevada Northern Railway Foundation

Mrs. Westland:

The Office of the Attorney General (OAG) has received your Complaint alleging that the Nevada Northern Railway Foundation (“the Foundation”) is not in compliance with Nevada’s Open Meeting Law (OML). The Complaint further alleges that the City of Ely (City) must bring the Foundation into compliance with the OML. Pursuant to Nevada Statute, the Office of Attorney General is authorized to investigate and prosecute violations of Open Meeting Law. See Nevada Revised Statutes (NRS) 241.037, 241.039, and 241.040.

Following its Review of your Complaint; the City’s Response; the Foundation’s Response; Attorney General Opinion No. 2017-03 (March 7, 2017); and relevant legal authorities; the OAG concludes the Foundation is not a public body as defined in NRS 241.015(4), and therefore it is not subject to the OML.¹

FACTUAL BACKGROUND

¹ It should be noted that pursuant to Section 4 of the Foundation’s Development Agreement between the City of Ely and the Foundation, the Board has agreed to conduct one meeting per year in conformity with the OML. The scope of this opinion covers only the application of NRS Chapter 241. Whether the Board has a contractual obligation to comply with the underlying requirements of the OML is not covered by this opinion.

The Complaint alleges that “the City of Ely must bring the Nevada Northern Railway Foundation into compliance with Nevada Open Meeting Laws” and that the Foundation “has always been a public body by definition in NRS 241 Chapter 527.” Further, the Complaint alleges that “since July 2016 [the Foundation] has not held public meetings nor complied with FOIA requests” and that “the original acts began in 2016, but the blatant infractions continue to present day.”

In November 1996, the Kennecott Corporation donated historic railroad items to the Nevada Northern Railway Foundation, Inc. (the Foundation),² a non-profit entity formed pursuant to Chapter 82 of the Nevada Revised Statutes.³ At that time, the Foundation’s governance documents designated the Ely City Council to serve as the Board of Trustees for the foundation. The Foundation’s governance documents were revised in 2016 to discontinue the Ely City Council’s direct administration through the creation of a separate Board of Directors for the Foundation, and to provide additional language to clarify the purpose of the Foundation.⁴

DISCUSSION AND LEGAL ANALYSIS

Your complaint alleges that the Foundation is a “public body” as defined in NRS Chapter 241 and is subject to the OML. In 2016, The OAG was specifically asked by the Ely City Attorney to provide a formal opinion on whether the Board of Directors of the Foundation is a “public body” required to comply with the OML. In OML Opinion No. 2017-03, dated March 7, 2017, the OAG concluded that the Foundation is not a “public body” as defined in NRS 241.015(4), and therefore it is not subject to the OML.

The Opinion explained that a board is not a “public body” unless it has two essential attributes. First, the board must be an “administrative, advisory, executive or legislative body of the State or local government consisting of at least two persons” and created by one of the means enumerated in NRS 241.015(4).

² White Pine Historical Railroad Foundation Amended and Restated Articles – Certified Copy (July 12, 2016) (filing changed the entity’s name to the Nevada Northern Railway Foundation Inc.)

³ See Gift by Grant, Bargain and Sale Deed between Kennecott Corporation (Grantor) and the White Pine Historical Railroad Foundation and the City of Ely (Grantees), dated December 29, 1986.

⁴ See Nevada Northern Railway Foundation Original Articles dated November 8, 1984; White Pine Historical Railroad Foundation Amended and Restated Articles – Certified Copy.

Opinion No. 2017-03 (March 7, 2017) at pg. 3. Second, the Board must either (1) expend, disburse, or be supported in whole or in part by tax revenue, or (2) advise or make recommendations to any entity which expends, disburses, or is supported in whole or in part by tax revenue. *Id.* NRS 241.015(4)(a)(1)-(7) specifically provides that in order to be considered a “public body” under the OML, the body must be created by one of the following means:

- (1) The Constitution of this State;
- (2) Any statute of this State;
- (3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;
- (4) The Nevada Administrative Code;
- (5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;
- (6) An executive order issued by the Governor;
- or (7) A resolution or an action by the governing body of a political subdivision of this State.

The Foundation’s governance documents establish that the first statutory element regarding the manner of creation is not met. Neither the Foundation nor the Board are created by one of the seven means enumerated in NRS 241.015(4)(a)(1)-(7). Rather, they are created and governed by the revised Articles of Incorporation and By-laws. The Foundation is a non-profit entity formed pursuant to Chapter 82 of the Nevada Revised Statutes and governed by the Board. Consequently, the Foundation is not subject to the OML.

CONCLUSION

The Board of Directors of the Nevada Northern Railway Foundation, Inc. is not a “public body” as defined in NRS 241.015(4), and therefore is not subject to the OML. As such, the OAG will be closing its file in this matter.

Respectfully,
AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
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