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September 10, 2024

Via U.S Mail and Email

Joseph A. Mendoza Jr.

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Email: [REDACTED]

Paul C. Murphy

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**Re: Open Meeting Law Complaint, OAG File No. 13897-495
North Lyon County Fire Protection District Board of Directors**

Dear Mr. Mendoza and Mr. Murphy:

The Office of the Attorney General (“OAG”) is in receipt of your complaints (“Complaints”) alleging violations of the Open Meeting Law, NRS Chapter 241, (“OML”) by the North Lyon County Fire Protection District Board of Directors (“Board”) regarding its August 17 and September 28, 2023, meetings.

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 Complaints, the Responses on behalf of the Board, and the agendas, minutes and recordings of the Board’s August 17, September 28, October 12, and November 9, 2023, meetings. After investigating the Complaints, the OAG determines that the Board did not violate the OML as alleged in the Complaints.

FACTUAL BACKGROUND

The Board held a public meeting on August 17, 2023. Agenda item #4 related to action regarding Complainant Mendoza as an employee of the Board. The Board called the item early in the meeting and spent about 40 minutes discussing it before Member Wheeler made a motion to terminate Mr. Mendoza. Member Wheeler appeared to be reading the motion from a prepared script. Member Callagy seconded the motion and after a brief discussion from the members, the motion passed three to two.

The Board entertained a discussion with its attorney regarding writing the order based on the motion and a recess was called so the attorney could draft the order. Upon return from the recess, Member Wheeler read a new motion that had been edited and the attorney indicated the Board could sign the motion after the meeting and it would be the order. Mr. Mendoza's termination included notice that he would be trespassed from the Board's property for one year.

The Board held a public meeting on September 28, 2023. While the recording of the meeting only includes the first half of the meeting, the evidence indicates that Complainant Mendoza was present for the meeting and spoke on behalf of Local 4547 during the meeting. Some time after the meeting ended, Mr. Mendoza was asked to leave the premises and was threatened with arrest if he did not leave the property pursuant to the trespass notice.

The Board held a public meeting on November 9, 2023. Complainant Mendoza was present at the meeting and spoke on behalf of Local 4547 during the meeting.

Complainants filed the instant complaints alleging (1) that a quorum of the Board engaged in serial communications regarding Complainant Mendoza's termination prior to the August 17 meeting, including reviewing a script of the motion to terminate; and (2) that Complainant Mendoza's being trespassed after the September 28 meeting violated the OML.¹

LEGAL ANALYSIS

The Lyon County Fire Protection District Board of Directors, created pursuant to NRS Chapter 474, is a "public body" as defined in NRS 241.015(4) and is subject to the OML.

¹ The Complaints also included an allegation that Member Callagy was not a proper member of the Board. This allegation falls outside of the OML as the OML does not address member elections or appointments. As such, the allegation will not be addressed in this opinion.

A. There is insufficient evidence of serial communications regarding the motion to terminate Complainant Mendoza.

Meetings of public bodies are required to be open and public. NRS 241.020(1). A public body conducts a “meeting” under the law when a quorum of members gather together and deliberate or take action. NRS 241.015(4). This includes a series of gatherings, whether in person or by electronic communication, if the communications collectively constitute a quorum. *Id.*

The Complaints allege that a quorum of members of the Board collectively discussed Item #4 prior to the Board’s August meeting and reviewed the draft motion that was eventually read by Member Wheeler. The Board contests this and asserts that Member Wheeler drafted the motion himself prior to the meeting. The evidence indicates that during the recess, the Board’s attorney edited and/or redrafted Member Wheeler’s motion, which was then re-read. However, the OAG does not possess any evidence that serial communications regarding the action occurred as the Board’s attorney is not a member and thus communications with the attorney would not count toward the quorum calculation. In addition, the Board had already voted as to what action it wanted to take. As such, the OAG does not find a violation of the OML in this respect.

B. As Mr. Mendoza’s trespass occurred after the meeting ended, the OAG does not have jurisdiction over it.

The OAG has previously held that exclusion of an individual from a meeting, regardless of a trespass notice, can be a violation of the OML as an improper identity-based speech restriction. *In re Nevada State High School Governing Board*, OMLO 13897-491 at 5-6 (Jul. 9, 2024). However, the OAG’s jurisdiction regarding meeting attendance extends only to the meeting itself. NRS 241.020(1). The evidence in this matter indicates that Complainant Mendoza was only trespassed and threatened with arrest when he refused to leave the Board’s property some time *after the meeting ended*. It is clear from the evidence that Complainant Mendoza was permitted to attend and speak at the September and November meetings in person. Thus, the OAG does not find a violation of the OML.

CONCLUSION

Upon review of your Complaints and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

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Attorney General

By: /s/ Rosalie Bordelove
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cc: Aaron Mouritsen, Fernley City Attorney
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