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OFFICE OF THE ATTORNEY GENERAL

5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

July 29, 2020

Via U.S. Mail

Nicole Barde



**Re: Board of Storey County Commissioners – Open Meeting Law
Complaint, OAG File No. 13897-349**

Dear Ms. Barde:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) filed May 25, 2019 alleging violations of the Open Meeting Law (“OML”) by the Storey County Board Commissioners (“Commission”).

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (“NRS”) 241.037; NRS 241.039; and NRS 241.040. In response to the Complaint, the OAG reviewed the Complaint; the response from the Commission (“Response”); the video recording, minutes, and agenda of the May 21, 2019 Commission meeting; prior OML decisions; and portions of the Nevada Revised Statutes relevant to the Complaint.

FACTUAL BACKGROUND

At the Commission’s May 21, 2019 meeting, as a member of the public, you commented during the public comment portion of the agenda item related to the 2019-2020 Storey County Final Budget for submission to the Department of Taxation, presented by Storey County Comptroller. During your public comment, you asked three specific questions related to the budget presentation. The Chairman suggested you meet with the Comptroller. You then requested that the Commission respond to the questions, and the Chairman stated that would not occur during public comment.

The Complaint alleges that you were not allowed to ask questions, but the recording of the meeting and the minutes reveal that you did indeed ask three questions. The Complaint recognizes that the Commission has responded to questions before and notes that you were able to ask a question on another agenda item during the May 21, 2019 meeting. You complain of a lack of clarity as to when questions may or may not be asked or by whom, and you request “clear rules which are consistently applied.”

DISCUSSION AND LEGAL ANALYSIS

The OML applies to “public bodies” as defined in NRS 241.015(4). The Commission is a public body. NRS 241.015(4). The OML requires “[p]eriods devoted to comments by the general public, if any, *and discussion of those comments.*” NRS 241.020(d)(3) (emphasis added). While the public must be afforded an opportunity to comment on items within the jurisdiction of the public body, discussion by the public body is not required. OMLO 2010-07/AG File No. 10-037 (Oct. 19, 2010); AG File No. 05-033 (Aug. 2005); OMLO 2001-56/AG File No. 01-053 (Dec. 10, 2001).

Where there is no deliberation or action, there is no OML violation. “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.” NRS 241.015(2). “Action” means a decision, commitment, or promise made by a majority of the members present during a meeting of a public body. NRS 241.015(1).

Here, you asked questions during the public comment period for the particular agenda item, and the Chairman directed your questions to be taken up with the Comptroller outside of the meeting. Besides the Chairman’s referral to the Comptroller, no other Commissioner engaged in discussion of your comment. Thus, there was no collective discussion or exchange of facts preliminary to a decision, and therefore no deliberation. *See* NRS 241.015(2). Moreover, the Commission did not take a motion on whether to answer your questions and did not entertain a vote on such. The Chairman acted alone, and no action was taken. *See* OMLO 2000-43/AG File No. 00-046 (Dec. 11, 2000). The Chairman’s referral of your questions to the Comptroller and the Chairman’s refusal to answer them directly did not rise to the level of deliberation and did not propose action. It follows that the Commission did not commit a violation of the OML. *See* AG File No. 13897-320 (May 16, 2019).

Regarding your request for “clear rules which are consistently applied,” the OAG has authority to investigate and prosecute any violation of the OML, and none has occurred in relation to the allegations of your Complaint. This Office previously has recommended to public bodies that at the conclusion of the public comment period or after each individual public member’s comments, the chairperson ask the members of the public body whether they would like to address the comments made by the public. OMLO 2010-07/AG File No. 10-037 (Oct. 19, 2010); AG File No. 05-033 (Aug. 2005). However, as previously noted, there is no OML requirement that the public body *must* discuss the public comment.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Carrie L. Parker
CARRIE L. PARKER
Deputy Attorney General

CLP:rmz

cc: Keith Loomis, Chief Deputy District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August, 2020, I mailed the foregoing letter by depositing a copy of the same in the U.S. mail, properly addressed, postage prepared, first place mail, to the following:

Nicole Barde

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██████████

Keith Loomis, Chief Deputy District Attorney
Storey County District Attorney
P.O. Box 496
Virginia City, NV 89440

/s/ Debra Turman
An employee of the State of Nevada
Office of the Attorney General