

AARON D. FORD  
*Attorney General*

KYLE E.N. GEORGE  
*First Assistant Attorney General*

CHRISTINE JONES BRADY  
*Second Assistant Attorney General*



JESSICA L. ADAIR  
*Chief of Staff*

RACHEL J. ANDERSON  
*General Counsel*

HEIDI PARRY STERN  
*Solicitor General*

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

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

October 5, 2020

*Via U.S. Mail*

Jocelyn Johnson  
[REDACTED]  
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-360  
In the matter of: Humboldt County School District**

Dear Ms. Johnson:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) filed on January 14, 2020 alleging a violation of the Open Meeting Law (“OML”) by the Humboldt County School District Board of Trustees (“Board”) regarding a meeting held by the Board on January 14, 2020.

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 following:

1. The Complaint and the attached exhibits;<sup>1</sup>
2. The meeting agenda for the Board’s December 10, 2019 meeting;
3. The meeting materials for the Board’s December 10, 2019 meeting (including the Humboldt County School District Board Memo from Dr. David Jensen, Superintendent, regarding Approval of Superintendent Negotiations and Contract);
4. The minutes for the Board’s December 10, 2019 Board meeting;
5. The meeting agenda for the Board’s January 14, 2020 meeting;

---

<sup>1</sup> The OAG also reviewed the meeting agenda, Board Memo regarding Superintendent Contract Renewal, and meeting minutes for the Board’s June 11, 2019 meeting, which were attached to Ms. Johnson’s Complaint.

6. The meeting materials for the Board's January 14, 2020 meeting (including the Humboldt County School District Board Memo from Dr. David Jensen, Superintendent, regarding Closed Session to Review and Consider Modifications to the Superintendent Contract to Increase the Number of Contract Days and Possible Increase Associated Retirement Benefits);
7. The minutes for the Board's January 14, 2020 meeting;
8. The written response by the Board to the Complaint and the supporting materials attached thereto; and
9. Prior OML decisions, and portions of the Nevada Revised Statutes relevant to the Complaint.

### **FACTUAL BACKGROUND**

The Humboldt County School District Board of Trustees is a "public body" as defined in NRS 241.015(4) and is subject to the OML. The Board consists of the following members: Glenda Deputy, President; Nicole Bengochea, Vice President; Boyd Betteridge, Secretary; Chris Entwistle; Andy Heiser; Abram Swensen; and Sabrina Uhlmann. Additionally, Dr. David Jensen serves as the Superintendent of the Humboldt County School District.

The Board held a meeting on December 10, 2019. The agenda for the December 10, 2019 Board meeting included the following agenda item under Section F. – Discussion and Possible Action Items, "8. Approval of Superintendent Negotiations and Contract Given Negotiations Have Been Completed with All Other Bargaining Groups."

At the December 10, 2019 Board meeting, the Board discussed Item F.8. – Approval of Superintendent Negotiations and Contract Given Negotiations Have Been Completed with All Other Bargaining Groups. After discussion of Item F.8, the Board ultimately approved a salary and sick leave increase for the Superintendent.

Subsequently, on January 14, 2020, the Board held an open public meeting. The Revised Agenda for the January 14, 2020 Board meeting included the following agenda items under Section F. – Discussion and Possible Action Items:

6. *Closed Session Pursuant to NRS 288.220 to Review and Consider Modifications to the Superintendent Contract Possibly Increasing the Number of Contract Days and Associated Increase to Retirement Benefits*

7. *Review and Possible Modification of the Superintendent Contract Increasing the Number of Contract Days and Associated Retirement Benefits [sic]*

As part of the January 14, 2020 Board meeting materials, a “Board Memo” was included that provided the following Background Information:

*Upon completion of the negotiations’ ratification for all bargaining units, negotiations with the Superintendent was the only outstanding item remaining. As part of this process, work began with the Board President, Vice President and Legal Counsel with the Superintendent to review the current contract which has been in place since 2000. No changes to the contract have occurred during this time frame. During December, the board authorized salary adjustments consistent with what was agreed with other bargaining units and administrative personnel, while additional information was gathered regarding the contract. Specifically, the board requested comparative data for districts throughout the state. This analysis excluded Clark and Washoe, as well as Esmeralda and Mineral as size creates these groups as outliers. One clear noted component was the number of contract work days. HCS D has the superintendent on a 230 day contract, while the majority of districts require 260 days with an associated number of vacation days (typically 20).*

At the January 14, 2020 Board meeting, prior to discussion of Agenda Item No. F.6., a Motion was made and carried for the Board to enter into Closed Session. The Board then met in Closed Session. During closed session, the Board did not take any action related to modifications to the Superintendent’s existing contract. Rather, prior to discussion of Agenda Item No. F.7., a Motion was made and carried to end Closed Session and enter Open Session. During Open Session, the Board voted not make any modifications to the Superintendent’s existing contract.

The instant OML Complaint specifically alleges that the Board violated the OML when it negotiated the Superintendent’s contract and salary in a closed session. The OML Complaint further alleges that it is unlawful for current Humboldt County School District Board of Trustees members to owe

money to the Humboldt County School District for the private costs associated with taking their respective spouses on school-board-associated trips.

### LEGAL ANALYSIS

The OML generally favors meetings to be open to the public. In enacting Nevada's OML, the Legislature found and declared that "all public bodies exist to aid in the conduct of the people's business." NRS 241.010. To that end, it was the Legislature's intent that actions by public bodies be "taken openly and that their deliberations be conducted openly." *Id.* NRS 241.020(1) further provides, "Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies. A meeting that is closed pursuant to a specific statute may only be closed to the extent specified in the statute allowing the meeting to be closed. All other portions of the meeting must be open and public, and the public body must comply with all other provisions of [the OML] to the extent not specifically precluded by the specific statute."

As noted above, the OML provides certain exceptions to the requirement for open and public meetings and allows a public body to hold a closed meeting. *See* NRS 241.030(1)(a). Other statutory provisions also expressly exempt certain discussions from the purview of the OML. One such exemption is found in NRS 288.220, which specifically provides that "[a]ny negotiation or informal discussion between a local government employer<sup>2</sup> and an employee organization or employees as individuals, whether conducted by the governing body or through a representative or representatives" are not subject to any provision of NRS which requires open or public meetings. NRS 288.220(1).

The Nevada Supreme Court has stated, "When it has been deemed suitable to do so, the legislature has from time to time 'specifically provided' certain exceptions to the open meeting requirement. Exceptions provided which permit closed meetings, for example, include questions of personal

---

<sup>2</sup> "Local government employer" is defined as "any political subdivision of this State or any public or quasi-public corporation organized under the laws of this State and includes, without limitation, counties, cities, unincorporated towns, school districts, charter schools, hospital districts, irrigation districts and other special districts." NRS 288.060.

character, misconduct, competence and health (NRS 241.030(1)). In addition to these exceptions, the legislature, in other NRS chapters, has enacted a series of specific exceptions to the general rule of publicity. (See NRS 281.511(9), 286.150(2) **288.220**, 630.336, 392.467(3)). When the legislature intends to make exceptions to the rule of publicity, it does so specifically by statute.” *McKay v. Bd. of Cty. Comm’rs of Douglas Cty.*, 103 Nev. 490 (1987) (emphasis added).

Moreover, the Government Employee-Management Relations Board (GEMRB) case, *In the Matter of Washoe County Teachers Association and the Washoe County School District*, Case No. A1-045295 further discussed this exception and addressed NRS 288.220(1), as then enacted<sup>3</sup>. There, the Washoe County Teachers Association asserted that the Washoe County School District refused to negotiate in good faith because it unilaterally determined that negotiations session had to be open to the public. The GEMRB held, “Obviously, the meeting wherein the Board of School Trustees ultimately reviews, considers and votes upon ratification of a contract with the Washoe County Teachers Association must be open and public.” *Id.* However, the GEMRB also held that negotiation sessions, whether informal or formal, between the Board’s negotiating team and the Association’s negotiating team were exempt from the open meeting setting. *Id.* Further, the GEMRB held that the purpose of NRS Chapter 288 was “to provide the framework within which local government employers and employee organizations may bargain collectively, and, to open lines of communication, both formal and informal.” *Id.* The GEMRB concluded that negotiation sessions pursuant to Chapter 288 of the NRS are to be closed unless the parties mutually agreed otherwise. *Id.*

In this case, the OAG has not received any evidence that the Board discussed the character, misconduct, or competence of Dr. Jensen when it entered into a closed meeting on January 14, 2020. Rather, as stated in the agenda, the closed meeting was to discuss possible increases in the superintendent’s number of contract days and associated retirement benefits.

---

<sup>3</sup> At the time of the decision, NRS 288.220(1) provided: “The following proceedings, required by or pursuant to this chapter, are not subject to any provision of chapter 241 of NRS: 1. Any negotiation or informal discussion between a local government employer and an employee organization or employees as individuals., whether conducted by the governing body or through a representative or representatives.”

The supporting materials, including the Board Memo provides additional support that Dr. Jensen's character, misconduct, or competence were not topics to be discussed during the closed meeting, but rather, the Board was to discuss whether comparative data from other venues supported any increase in the superintendent's wages and/or retirement benefits. Accordingly, NRS 241.031 did not require the meeting to discuss negotiations of the superintendent's wages and/or retirement benefits to be open and public.

Further, NRS 288.220(1) is broadly stated to include any negotiation or informal discussion between a local government employer and employees as individuals. Accordingly, because the Board's closed session at its January 14, 2020 meeting involved discussion and negotiation of Dr. Jensen's employment contract, including wages and retirement benefits, such discussions and negotiations may be held outside an open meeting and are exempt from the OML pursuant to NRS 288.220.

Second, with regards to the allegations in the Complaint related to the legality of moneys owed by Board members to the Humboldt County School District for costs for school-board associated trips, the OAG will refrain from discussing the same. NRS 241.039(1) provides that a complaint alleging a violation of NRS Chapter 241 may be filed with the Office of the Attorney General. Moreover, NRS 241.039(2) provides that the Attorney General "shall investigate and prosecute any violation of **this chapter**". NRS 241.039(2) (emphasis added). Thus, on its face, NRS 241.039 only allows the OAG to investigate and prosecute complaints under NRS Chapter 241.

Here, the request that the OAG perform an investigation on the legality of current Humboldt County School District Board of Trustees owing money to the Humboldt County School District for private costs associated with taking their respective spouses on school-board-associated trips is not based on alleged violations of NRS Chapter 241, Nevada's Open Meeting Laws. The OAG only has statutory authority to investigate and prosecute alleged

Jocelyn Johnson  
Page 7  
October 5, 2020

violations under NRS 241 and therefore will abstain from determining the legality of such expenditures and/or debts.<sup>4</sup>

### CONCLUSION

Upon review of your Complaint 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,

AARON D. FORD  
Attorney General

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

---

<sup>4</sup> The Board's Response asserts that the Board members are shielded from criminal penalty or administrative fine, pursuant to NRS 241.040(6). The Complaint does not allege any individual Board member acted with knowledge of a violation and subsequent participation in an open meeting despite such knowledge. Accordingly, the OAG makes no finding whether criminal penalties or administrative fines should issue.