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May 4, 2022

Via U.S. Mail & Certified Mail

[REDACTED]
Tammy Holt-Still
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-402
In the matter North Valley Water District Subcommittee of the
Reno City Council**

Dear Mrs. Holt-Still:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging violations of the Open Meeting Law (“OML”) by the North Valley Water District Subcommittee of the Reno City Council (“Subcommittee”) regarding its January 25, 2021, meeting.

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 Complaint included a review of the following: the Complaint and attachments; the Subcommittee’s response and attachments, the agenda and the recording of the Subcommittee’s January 25, 2021, meeting. After investigating the Complaint, the OAG determines that the Subcommittee did not violate the OML as alleged in the Complaint.

FACTUAL BACKGROUND

As a committee of the Reno City Council, the Subcommittee is a public body as defined in NS 241.015 and subject to the OML.

On January 25, 2021, the Subcommittee held a meeting via Zoom videoconference. The agenda for the meeting was posted on the City of Reno Calendar portion of the City’s website, but was not posted in the meeting portal where Reno City Council meeting agendas are posted. When Complainant

contacted City staff regarding the agenda, she was directed to the agenda's location on the City's website.

The agenda for the meeting listed two methods for public comment:

Pursuant to Section 2 of Directive 006, members of the public may submit public comment by leaving a voicemail at (775) 393-4499. Messages received prior to 4:00 p.m. on the day before the meeting will be transcribed, provide to the North Valleys Water Management Subcommittee of the Reno City Council for review, and entered into the record. Public comment may also be submitted by emailing: cityclerk@reno.gov. Public comment received during the meeting will be provided to the Subcommittee Members for review prior to adjournment, and entered into the record.

At the start of the meeting, the clerk noted that a voicemail had been received for public comment from Complainant, but due to technical difficulties, she was unable to play it at that time. During the second public comment period, the clerk noted that emailed public comment, including attachments, had been received from the Complainant and that it had been provided to the members and entered into the record. The chair of the meeting stated that he had received the documents and reviewed them prior to the meeting.

Complainant filed the instant complaint alleging that the Subcommittee violated the OML by (1) failing to adequately post their agenda their website, (2) failing to play her public comment message during the meeting, and (3) requiring the use of the Zoom software to view the meeting.

LEGAL ANALYSIS

A. The Subcommittee posted its agenda to its website in accordance with the OML.

Public bodies in Nevada must issue a public notice agenda for their meetings at least 3 working days prior to the meeting. NRS 241.020(3). If a public body maintains a website, it must post that agenda to its website. NRS 241.020(6). The agenda at issue was posted to the City's website and thus the Subcommittee did not commit a technical violation of the OML. Further, when Complainant contacted the City, she was directed to the agenda on the website. However, the OAG cautions that public bodies should make reasonable efforts to make their agendas easily accessible to the public.

B. The Subcommittee did not violate the OML with respect to Complainant's public comment.

Public bodies in Nevada must include on their agenda periods devoted to comments by the general public. NRS 241.020(3)(d)(3). Due to the COVID-19 pandemic, the Governor of Nevada issued an emergency directive suspending the physical requirements for public meetings. Declaration of Emergency Directive 006, available at [https://gov.nv.gov/News/Emergency Orders/2020/2020-03-22 - COVID-19 Declaration of Emergency Directive 006/](https://gov.nv.gov/News/Emergency%20Orders/2020/2020-03-22%20-%20COVID-19%20Declaration%20of%20Emergency%20Directive%20006/) (hereinafter "Directive 006"). Directive 006, Section 2, required public bodies to provide a means for the public to provide public comment and to post that means on its agenda. "Public comment options may include, without limitation, telephonic or email comment." *Id.*

Complainant submitted public comment via voice message and email. The public comment options listed on the agenda did not state that voice messages would be played during the meeting. Thus, the Subcommittee's failure to play the voice message did not violate the OML. Complainant's written public comment was distributed to the members and included in the record of the meeting. Thus, the Subcommittee did not violate the OML with respect to Complainant's public comment.¹

C. The Subcommittee did not violate the OML by requiring the use of Zoom for the meeting.

Complainant's last allegation is that requiring the use of a private program, Zoom, for the public to observe the meeting is in violation of the OML. Directive 006 specifically allowed public bodies in Nevada to hold a meeting via electronic means. To observe a meeting via Zoom, the software is free to download. Thus, the OAG does not find a violation of the OML for the use of the program.²

¹ Directive 006 expired on May 31, 2021. During the 2021 Legislative Session, the Nevada Legislature passed Assembly Bill 253, amending the OML to allow for virtual meetings in certain circumstances. Under the language of AB253, email only public comment is no longer permitted and a live option must be provided. However, because Directive 006, and not AB253, was in effect at the time of this meeting, it controls.

² The OAG notes that a telephonic option is required for virtual meetings held under the updated language contained in AB253.

CONCLUSION

Upon investigating the present Complaint, the OAG does not find that the Subcommittee violated the OML. The OAG will close its file on this matter.

Sincerely,

AARON D. FORD
Attorney General

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