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555 E. Washington Ave. Suite 3900
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April 22, 2022

Via U.S. Mail & Certified Mail

William C. Donalson
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-409,
McDermitt Fire District Board**

Dear Mr. Donalson:

The Office of the Attorney General (OAG) has received your Complaint alleging that the McDermitt Fire District Board (“Board”) violated Nevada’s Open Meeting Law (“OML”) at its February 25, 2021, open meeting. Pursuant to Nevada Statute, the Office of Attorney General is authorized to investigate and prosecute violations of the OML. *See* Nevada Revised Statutes (“NRS”) 241.037, 241.039, and 241.040.

Following its Review of your Complaint; the Board’s Response; minutes from the February 25, 2021, open meeting; Attorney General Open Meeting Law Opinion AG File No. 10-037; OML Complaint File No. 13897-320 (May 16, 2019); interview with Chairman Dale Hartley; and relevant legal authorities; the OAG concludes the Board did not violate the OML.

FACTUAL BACKGROUND

The Complaint alleges that “Chairman Hartley violated the Open Meeting Law. The Board approved sending a letter to Joe Van Eeten ... requesting he remove flammable trash/material from his property. This item was not on the agenda, occurring during public comment.”

During the second public comment period of the February 25, 2021, meeting, local resident Howard Huttman of Cordero Mine Road requested action pursuant to 474.580 regarding a potential fire hazard caused by trash and other flammable material present on the property known as the White Horse Inn, also on Cordero Mine Road. The minutes provide the phrase, “Board will look into it.” Mr. Huttman was advised by the Board to submit a required written and signed statement of complaint to the Board before any action could be taken, including the drafting of a letter to Mr. Van Eeten, the owner of the White Horse Inn. No motion was made and no vote was taken. The meeting was then adjourned, after which Mr. Hartley provided Mr. Huttman the contact information to forward a complaint to.

The following day Mr. Huttman called the Board and advised that he would not be filing any complaint. No further action was taken regarding the matter.

DISCUSSION AND LEGAL ANALYSIS

The McDermitt Fire District Board is a public body as defined by Nevada Revised Statute (“NRS”) 241.015(4) and subject to the OML.

The OML requires that a public notice agenda include: “Periods Devoted to comments by the general public, if any, **and discussion of those comments.**” NRS 241.020(3)(d)(3) (emphasis added). Regardless of the method chosen by the public body for public comment on agenda items, “No action may be taken upon a matter raised during a period devoted to comments by the general public until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).” NRS 241.020(3)(d)(3).

On the face of the statute, the OML allows discussion between the public body and the general public, during the public comment period. Moreover, the legislative history of NRS 241 reveals that “the Legislature intended to allow public bodies to discuss matters arising during public comment without fear of violating the OML” and this intent is “clear.” Attorney General Open Meeting Law Opinion (“OMLO”) No. 10-037 at 7:10-12 (October 19, 2010). Additionally, although “[...] the law does not require the public body to answer the public’s inquiries [...] neither does it prohibit the public body from discussing the public’s comments.” *Id.* (citing AG File No 05-033 August 29, 2005); NRS 241.020(3)(d)(3).

Your complaint focuses on action allegedly taken by Board based on the public comment complaint of a potential fire hazard, specifically that “The Board approved sending a letter...”, an action that, if proved true, would be a violation of the OML.

Pursuant to NRS 241.015(1), the term “action” is defined as:

- (a) A decision made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body;
- (b) A commitment or promise made by a majority of the members present, whether in person or by means of electronic communication, during a meeting of a public body;
- (c) If a public body may have a member who is not an elected official, an affirmative vote taken by a majority of the members present, whether in person or by means of electronic communication, during a meeting of the public body; or
- (d) If all the members of a public body must be elected officials, an affirmative vote taken by a majority of all the members of the public body.

The term “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). Except in an emergency, public bodies in Nevada are required to work from an agenda consisting of clear and complete statements of the topics scheduled to be considered at the meeting. NRS 241.020(3).

During the meeting at issue, the Board simply discussed the complaint made during the Public Comment Period, but did not deliberate or vote and no commitment or promise regarding the matter was made. Further, approval to draft and send a letter to Mr. Van Eeten was never confirmed by the Board. The extent of the Board’s “action” was to inform the complainant of the requirement that he submit to them a written and signed complaint so that they could take action thereupon. Mr. Huttman declined to provide such written complaint, and dismissed the verbal complaint made at the meeting. Therefore, the OAG does not find any action, as defined in NRS 241.015(1), was taken by the Board.

CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred on which formal findings should be made. The OAG will close its file regarding this matter.

Respectfully,
AARON D. FORD
Attorney General

By: 

JOEL BEKKER
Deputy Attorney General

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