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January 16, 2023

Via U.S. Mail

Tom Riggins



**Re: Open Meeting Law Complaint, OAG File No. 13897-425
Lander County School District Board of Trustees**

Dear Mr. Riggins:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging a violation of the Nevada Open Meeting Law (“OML”) by the Lander County School District Board of Trustees (“Board”) asserting that Board staff took an action that had not been approved by the Board regarding the District Policy Manual.

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 Complaint; the response filed on behalf of the Board and all attachments thereto; the agendas and minutes Board’s October 8, 2019 and July 13, 2021 meetings; the recording of the Board’s July 13, 2021 meeting; and the Board’s Policy Manual.

After investigating the Complaint, the OAG determines that the Board did not violate the OML because the Board did not take action outside of a meeting regarding the Policy Manual.

FACTUAL BACKGROUND

The Board held a meeting on October 8, 2019. Item F.3. of the Board's agenda stated: "Approval of LCSD Policy Recording Conversations 005.2.13 (1st Reading)-The Board will review and possibly take action to approve the first reading of the new policy." During the meeting, the Board discussed the item, but took no action.

The Board held a meeting on July 13, 2021. Some time prior to the meeting, Complainant discovered the recording policy in the Board's Policy Manual. Complainant brought this issue to the Board's attention by making public comment during the July 13 meeting. The Board did not discuss the item or place it on a later agenda for action.

Upon receipt of the instant Complaint, the Board determined the policy had been erroneously included in the Policy Manual and removed the language.

LEGAL ANALYSIS

The Board, as the governing body of a public school district under NRS 386.110, is a public body as defined in NRS 241.015(4) and is subject to the OML.

The OML defines "action" by a public body 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.

NRS 241.015(1). The OML prohibits deliberation or action by a quorum of a public body outside of a properly noticed public meeting. NRS 241.015(3).

The Complaint alleges an item was placed in the Board Policy Manual without action by the Board. However, the Complaint does not allege, nor does the OAG possess evidence of, a collective discussion or decision by a quorum of the Board outside of a meeting regarding the issue. To the contrary, the Board has removed the language from the Manual and contended that it was incorrectly placed there by Board staff. Thus, the OAG does not find a violation of the OML.

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/ Rosalie Bordelove
ROSALIE BORDELOVE
Chief Deputy Attorney General

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