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April 16, 2025

Via U.S Mail

James M. Davis

[REDACTED]
[REDACTED]

Clarice E. Meshberger

[REDACTED]
[REDACTED]

Sandy Harrison

[REDACTED]
[REDACTED]

Deanne M. Davis

[REDACTED]
[REDACTED]

Frank M. Schroeder

[REDACTED]
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Paul E. Meshberger

[REDACTED]
[REDACTED]

James L. Lawheed

[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-488
Lyon County School District Board of Trustees**

Dear Mr. Davis, Mrs. Davis, Mr. Meshberger, Mrs. Meshberger, Mr. Schroeder,
Mr. Lawheed and Mrs. Harrison:

The Office of the Attorney General ("OAG") is in receipt of your complaints ("Complaints") alleging violations of the Open Meeting Law, NRS Chapter 241, ("OML") by the Lyon County School District Board of Trustees ("Board") regarding its June 27 and July 25, 2023, meetings.

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 Complaints included a review of the Complaints, the Responses on behalf of the Board, and the agendas, minutes and recordings of the Board's June 27 and July 25, 2023, meetings. After investigating the Complaints, the OAG determines that the Board did not violate the OML as alleged in the Complaints.

FACTUAL BACKGROUND

The Board held a public meeting on June 27, 2023. Prior to the meeting, a quorum of the Board attended an attorney-client session with its legal counsel and some staff members. The purpose of this session was to receive information from the Board's attorney related to potential litigation involving roof warranty issues at one of the district's schools and to discuss labor negotiations. Item 12 on the Board's agenda related to the roof warranty issue.

During one of the meeting's public comment periods, the Board President's wife made public comment including a statement that Board members were prohibited from responding to public comments. She also made statements regarding other public commenters. No public commenter was stopped from making their comments.

The Superintendent's assistant took notes for the meeting, intended to be used for minutes. Complainant Deanne Davis made a request for the minutes of the June 27 meeting on July 24 and was informed that they were not available due to the Superintendent's assistant being on an unanticipated medical leave. She was offered the recording of the meeting at that time.

The Board held a public meeting on July 25, 2023. Prior to the meeting, a quorum of the Board attended an attorney-client session with its legal counsel regarding labor relations matters. Agenda Item #11 read:

11. CONSENT AGENDA (FOR POSSIBLE ACTION): Per LCSD Board Policy BDD: Board Meeting Procedures, all matters listed under the consent agenda are considered routine and may be acted upon by the Board of School Trustees with one action and without discussion. During this meeting, any member of the Board may request that an item be removed from the consent agenda, discussed, and acted upon separately.

- 11.A. Trustee Questions and Answers - No questions were submitted by noon, 7/24/23.
- 11.B. Request for Early Graduation/HSE (confidential)
- 11.C. Request for Leave (confidential)
- 11.D. Annual Report of Sportsmanship Violations (confidential)
- 11.E. Personnel Reports
- 11.F. Travel
- 11.G. Quarter 4 Class Size Reduction

- 11.H. Excess Worker's Compensation Renewal - Warren Reed Insurance
- 11.I. School Bus Purchase
- 11.J. Special Services AB 56 Physical Mechanical Restraint Report
- 11.K. District Financial Report

During Item 11, Trustee Hendrix made a motion to discuss Item 11.E and Item 11.J from the consent agenda separately. The motion was seconded by Trustee Parsons. The Board voted 2-5 against the motion. Trustee Peterson made a motion to approve the consent agenda as presented. It was seconded by Trustee McIntyre. The Board voted 4-3 for the motion and it passed.

Complainants filed the instant complaints alleging: (1) the closed gathering prior to the June 27 meeting violated the OML; (2) failure to stop the President's wife from making her comments during the June 27 meeting violated the OML; (3) minutes of the June 27 meeting were not made available within the time required by the OML; (4) the closed gathering prior to the July 25 meeting violated the OML; (5) the Board's use of consent agendas in general violates the OML; (6) failure to remove an item from the consent agenda violated the OML; and (7) agenda Item 11.A of the July 25 meeting was not clear and complete.

LEGAL ANALYSIS

The Lyon County School District Board of Trustees, as the governing body of a public school district in Nevada, is a "public body" as defined in NRS 241.015(4) and is subject to the OML.

As a preliminary matter, allegations 5 and 6 fail to state a claim under the OML. Consent agendas are an organizational tool expressly permitted by the OML. NRS 241.020(3)(d)(6)(II) ("The public body may combine two or more agenda items for consideration..."). Because the OML contains no requirement that any particular item be discussed or the level to which items are discussed, any item listed on an agenda as an action item, whether it be listed as a "consent agenda" item or not, may be acted upon by the public body. Thus, neither use of a consent agenda nor a vote not to remove an item for discussion violates the OML.

A. The OAG does not find evidence of an OML violation concerning the closed gatherings of the Board prior to the June 27 and July 25 meetings. (Allegations 1 and 4)

Except as otherwise provided in specific statute, the OML requires all meetings of public bodies to be open and public, and all persons must be permitted to attend any meeting of these public bodies at a physical location or by means of a remote technology system. NRS 241.020(1). A meeting held for the purpose of having an attorney-client discussion regarding potential or existing litigation is not a meeting for purposes of the OML. NRS 241.015(3)(b)(2). Additionally, no agenda is required to be posted and no notice is required to be provided to any member of the public. *See* OMLO 2002-21 (May 20, 2002).

A public body may deliberate “collectively to examine, weigh and reflect upon the reasons for or against the action,” which connotes collective discussion in an attorney-client conference. *See* NRS 241.015(2); *Dewey v. Redevelopment Agency*, 119 Nev. 87, 97, 64 P.3d 1070, 1077 (2003), OMLO 2001-09 (March 28, 2001). However, NRS 241.015(3)(b)(2) does not permit a public body to take action in an attorney-client conference.

Further, any meeting of the governing body of a local government employer with its management representative or representatives is not subject to any provision of NRS which requires a meeting to be open or public. NRS 288.220(4). The Board, as the governing body of a public school district in Nevada is a “local government employer” for purposes of this exemption. NRS 288.060.

Prior to the June 27 meeting, the Board met with its counsel to discuss potential contract litigation and labor negotiation issues. The Board acted on the contract issue during the public meeting under Item 12. Prior to the July 25 meeting, the Board met with its counsel regarding labor negotiations. The complaints allege that the failure of the Board to announce the reasons for the closed gatherings violated the OML. The OAG does not possess evidence that anything was discussed during the closed gatherings other than those items specifically exempt from the OML’s requirements. Thus, since there was no “meeting” under the OML, there was no requirement to notice the gatherings or open any part of them to the public. As such, the OAG does not find a violation of the OML.

B. The Board did not violate the OML by allowing the Board President's wife to speak during public comment at the June 27 meeting. (Allegation 2)

The OML provides that a public body may not inform the public that it legally is prohibited from discussing public comments, either among themselves, or with speakers from the public. NRS 241.020(2)(d)(3) clearly allows discussion with members of the public. *See* § 7.04 of the Open Meeting Law Manual (2019). Also, the OML allows considerable discretion to the public body as to length of time allowed to speakers. *See* § 7.05 of the Open Meeting Law Manual (2019). Furthermore, any restrictions on comments made by the public may not be based on viewpoint. NRS 241.020(7).

Here, a public commenter, not the Board, informed the public that the Board was prohibited from discussing public comment. As the Board did not make this statement, the OAG does not find it to be in violation of the OML. Additionally, although the speaker's comments were not favorable to some members of the public, the Board is statutorily prohibited from restricting comments based upon viewpoint. In fact, no public commenter was stopped from speaking during the meeting. Thus, the OAG does not find a violation of the OML in this respect.

C. The Board did not violate the OML by failing to have draft minutes of the June 27 meeting available within 30 days as the Board made the recording of the meeting available within that time frame. (Allegation 3)

The OML provides that "Unless good cause is shown...a public body shall approve the minutes of a meeting within 45 days after the meeting or at the next meeting of the public body, whichever occurs later." NRS 241.035(1)(e). Minutes or an audio recording of a meeting...must be made available for inspection by the public within 30 working days after the adjournment of the meeting. NRS 241.035(2) A copy of the minutes *or audio recording* must be made available to a member of the public upon request at no charge. *Id.*

Here, while the minutes were not provided within 45 days after the June 27 meeting or at the July 25 meeting, given the unanticipated medical leave of the Superintendent's assistant, the sole keeper of the minutes for the meeting, the OAG finds good cause for the delay. Moreover, an audio recording was provided to Complainant Deanne Davis through the YouTube link. The OAG notes that while some portions of the audio recording were inaudible, the Board

nevertheless did comply with NRS 241.035(2). The OAG further cautions the Board to ensure that future meetings are adequately recorded.

D. Agenda Item 11.A of the July 25 meeting agenda met the clear and complete standard and did not violate the OML. (Allegation 7)

The OML requires public body agendas to include clear and complete statements of the topics scheduled to be considered during the meeting and a list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term “for possible action” next to the appropriate item. NRS 241.020(d)(1)-(2). Any action taken by a public body is required to be made by a majority of the members present. NRS 241.015(1).

The Complaints allege that Item 11.A of the July 25 meeting agenda did not meet this standard. Item 11.A read: “Trustee Questions and Answers - No questions were submitted by noon, 7/24/23.” While Item 11.A was acted upon along with the other consent agenda items in a block vote, it was not discussed and it does not appear that any substantive action was taken on the item. Thus, the OAG does not find a violation of the OML.

CONCLUSION

Upon review of your Complaints 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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