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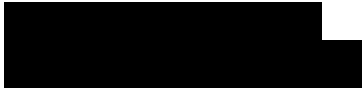
HEIDI PARRY STERN
Solicitor General

Via U.S Mail

Sharon A. Wehrly



Paula J. Elefante



**Re: Open Meeting Law Complaint, OAG File No. 13897-490
Pahrump Valley Museum and Historical Society Board of
Trustees**

Dear Ms. Wehrly and Mrs. Elefante:

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 Pahrump Valley Museum and Historical Society Board of Trustees (“Board”) regarding a closed meeting held on August 23, 2023.

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 other information regarding the Board’s creation, membership and operations. The OAG concludes that the Board is not a public body as defined in the OML and therefore not required to comply with the OML for its meetings.

FACTUAL BACKGROUND

The Pahrump Valley Museum and Historical Society (“Society”) is a private domestic nonprofit corporation that was formed in 1992. In or around 1995, the Nye County Board of Commissioners approved a tax levy pursuant to

NRS 244.377 to assist it in covering the expense of maintaining operations of the Pahrump Valley Museum. In addition, in or around 2010, Nye County entered a contract with the Society to pay certain expenses and perform certain administrative tasks for the Society in exchange for the Society continuing to maintain and operate the Pahrump Valley Museum. Beyond the terms of the contract, the Nye County Board of Commissioners does not have authority to control the actions of the Society or choose members of the Board.

The Board held a meeting on August 23, 2023, wherein it voted to remove Complainants as Board members. The meeting was not open to the public and Complainants were not notified of the meeting until after it occurred. Complainants alleged that the closing of this meeting to the public and the failure to provide notice to Complainants that their character would be discussed and/or action would be taken against them, violated the OML.

LEGAL ANALYSIS

The threshold question in the instant matter is whether the Board is a “public body” as defined in the OML and thus required to comply with its provisions. The OML includes the following definition of a public body:

Any administrative, advisory, executive or legislative body of the State or a local government consisting of at least two persons which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes a library foundation as defined in NRS 379.0056, an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405, if the administrative, advisory, executive or legislative body is created by:

- (1) The Constitution of this State;
- (2) Any statute of this State;
- (3) A city charter and any city ordinance which has been filed or recorded as required by the applicable law;
- (4) The Nevada Administrative Code;
- (5) A resolution or other formal designation by such a body created by a statute of this State or an ordinance of a local government;
- (6) An executive order issued by the Governor; or

- (7) A resolution or an action by the governing body of a political subdivision of this State;

NRS 241.015(4)(a). A meeting of the board of directors of a nonprofit corporation may constitute an administrative, executive or advisory body of state or local government if the other statutory criteria are met. *In re Mesquite Regional Business, Inc.*, OMLO 13-021 at 8 (Feb. 13, 2014).

Complainants allege that because the Society receives funding from Nye County that is collected via a specific tax levy, the Society's Board is a public body under the OML.¹ The first step in determining whether a body is a "public body" is to determine whether it has a sufficient nexus to state or local government. The OAG has previously used a functional equivalency test to determine whether this element is met. *In re Mesquite* at 7. This test looks at the following factors: (1) whether the entity performs a governmental function; (2) the level of government funding; (3) the extent of government involvement or regulation; and (4) whether the entity was created by government. *Id.* at 11. In examining these factors, the OAG does not find a sufficient nexus to state or local government to meet this element of the public body definition. The Society runs a museum that it ran prior to the County's involvement; they are funded in part by a tax levy, but also by donations; the County has very little involvement in their affairs; and the entity was not created by the County.

In addition, the OAG does not possess evidence that the Board meets any of the creation requirements contained in NRS 241.015(4)(a)(1)-(7). The evidence in the possession of the OAG indicates that the Board was created in 1992 by a group of private citizens desiring to start a museum to preserve the heritage of Pahrump, Nevada, and the State of Nevada in general. Lastly, the OAG does not possess evidence to indicate that the Board was created to circumvent the OML or that its actions are being used in such a fashion. Thus, the OAG finds that the Board is not a public body and not subject to the OML. *See In re Friends of the Belmont Courthouse*, OMLO 13897-318 at 2 (Oct. 2, 2019).

¹ The Complaints also allege that the Board's bylaws require meetings to comply with the OML and thus the OML's requirements apply. The OAG does not have jurisdiction to enforce a body's bylaws and thus will not address that allegation in this opinion. NRS 241.039.

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

cc: Rob Szychowski, Board President
Pahrump Valley Museum & Historical Society
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