

AARON D. FORD
Attorney General

CRAIG A. NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

1 State of Nevada Way, Suite 100
Las Vegas, Nevada 89119

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TERESA
BENITEZ-THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

Via U.S. Mail and Electronic Mail

Thomas Henry Tanner



**Re: Open Meeting Law Complaint - Douglas County School District
Board of Trustees; OAG File No. 13897-492**

Dear Mr. Tanner:

The Office of the Attorney General (“OAG”) is in receipt of your complaint alleging violations of the Open Meeting Law (“OML”) by the Douglas County School District Board of Trustees (“Board”) when the Board made the decision during its October 6, 2023, Board Meeting (“Meeting”) to take a thirty-nine minute “dinner recess” after the public comment period, but before the Board voted, on Agenda Item No. 2.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (NRS) 241.037; NRS 241.039; NRS 241.040. In response to your complaint, the OAG reviewed your complaint, the Board’s response and the agenda, minutes and video recording for the Meeting. After investigating the matter, the OAG does not find a violation of the OML.

FACTUAL BACKGROUND

The Board held the Meeting at the Douglas High School Media Center. There were a large number of attendees, and the Board used an overflow room to accommodate the members of the public wishing to view and provide public

comment during the Meeting. At issue is Item No. 2 on the agenda, which stated the following:

**2. Mutual Termination of Superintendent Without Cause
(Discussion and For Possible Action)**

The Board will consider whether to approve a proposed mutual agreement with the Superintendent pursuant to which the District will exercise its contractual right to terminate, without cause, the Employment Agreement of the Superintendent, and to authorize payments in accordance therewith.

RECOMMENDATION: Approve the proposed mutual agreement with the Superintendent, pursuant to the contractual right to terminate, without cause, the Employment Agreement of the Superintendent, and authorize payments in accordance therewith.

The Meeting began at 3:04 p.m., and Item No. 2 was heard shortly after the meeting began. After receiving a presentation from the legal counsel for Superintendent Keith Lewis, the Board discussed the agenda item for approximately 30 minutes. At approximately 3:41 p.m., a motion was made by Board member Burns to “approve the proposed mutual agreement with the Superintendent, pursuant to his contractual right to terminate, without cause, the Employment Agreement of the Superintendent, and authorize payments in accordance therewith.” This motion was seconded by Board member Dickerson.

Before the Board voted on the motion, the Chair of the Board called for public comment at 3:42 p.m. The public comment period lasted for nearly three hours, and over 80 members of the public provided public comment on the agenda item. Public comment concluded at 6:30 p.m. At the conclusion of the public comment period, the Chair of the Board called for a recess, which lasted approximately 39 minutes. During the recess the Board went to a private room to eat dinner. The Board reconvened at 7:09 p.m., and the Chair of the Board called for a vote on the agenda item. The motion failed with 3 votes in favor of the motion and 4 votes against the motion. After some discussion by the Board, there were no additional motions on Agenda Item No. 2 and the Board went to the remaining items on the Meeting agenda.

Your complaint alleges that the recess taken by the Board after the public comment period for Agenda Item No. 2, followed by the Board convening in a private room not open to the public for dinner was in violation of the OML.

DISCUSSION AND LEGAL ANALYSIS

The Board is created by NRS Chapter 386 and is comprised of elected officials. It is a “public body” as defined in NRS 241.015(5) and subject to the OML.

The OML requires the actions of public bodies “be taken openly and that their deliberations be conducted openly.” NRS 241.010(1) *See McKay v. Bd. of Supervisors*, 102 Nev. 644, 651 (1986). The OML mandates that “. . .all meetings of public bodies must 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). The OML defines a “meeting” as “[t]he gathering of members of a public body at which a quorum is present, whether in person, by use of a remote technology system or by means of electronic communication, to deliberate toward a decision or to take action on any matter over which the public body has supervision, control, jurisdiction or advisory power.” NRS 241.015(4)(a)(1). The OML defines “deliberate” as a public body acting “collectively to examine, weigh and reflect upon the reasons for or against the action.” NRS 241.015(3).

The OML does not prohibit a public body from taking a recess during a public meeting unless the recess is used to convene a quorum, or a series of gatherings that collectively constitute a quorum, of the public body to deliberate “with the specific intent to avoid the provisions of this chapter.” NRS 241.015(4)(a)(1)(I)-(III). It is not uncommon for a public body to declare a recess during long public meetings. Here, a violation of the OML would require evidence that the Board used the recess to deliberate on Agenda Item No. 2, or any other matter over which the Board has supervision, control, jurisdiction or advisory power.” While the dinner recess taken by the Board created an appearance of impropriety, after investigating your complaint the OAG does not possess any evidence that the Board’s dinner recess during the Meeting included any deliberation or any other actions in violation of the OML.

CONCLUSION

After investigating your complaint, the OAG determines that the Board did not commit any provable OML violation with respect to the recess taken by the Board during its October 6, 2023, meeting.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Josh Reid
JOSH REID
Special Counsel

cc: Ryan Russell, Esq.
Allison MacKenzie
P.O. Box 646
Carson City, NV 89702