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May 6, 2024

Via U.S Mail

Thomas G. Daly
[REDACTED]

Deborah Mardon
[REDACTED]

Scott L. Finley
[REDACTED]

Joseph S. McElhinney
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-482
Washoe County Board of County Commissioners**

Dear Mr. Daly, Mr. Finley, Ms. Mardon and Dr. McElhinney:

The Office of the Attorney General (“OAG”) is in receipt of your complaints (“Complaints”) alleging violations of the Open Meeting Law (“OML”) by the Washoe County Board of County Commissioners (“Board”) regarding its April 25, 2023, meeting.

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 Response on behalf of the Board and attachments, and the agenda and minutes for the Board’s April 25, 2023, meeting. 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 April 25, 2023. Prior to this meeting, the Board had a practice of including a general public comment period at the beginning of its meetings in addition to one at the end. The following statements regarding public comment were included on the agenda for the April 25 meeting:

Items voted on in a block are considered a single item for purposes of public comment on action items as provided below in the description of the parameters for ‘Public Comment’ section, so that there will be only one period of public comment on the block vote; any public comment made during that period may pertain to any of the items being voted on in the block, but there will not be separate public comment periods for each item within the block.

...

Additionally, public comments of three minutes per person will be heard during individually numbered items designated as “for possible action” on the agenda.

The only public comment period specifically listed on the agenda was a general public comment period near the end of the meeting. The minutes of the April 25 meeting indicate that public comment was called on action items after discussion, but prior to a vote, and a general public comment period was held near the end of the meeting.

The Complainants allege that the removal of a general public comment period at the beginning of the meeting violates the OML by being unreasonable and discouraging public comment. One Complaint further alleges that the Chair of the Board’s refusal to add an agenda item to talk about the public comment policy, despite a request from another Commissioner, violates the OML.¹

LEGAL ANALYSIS

The Washoe County Board of County Commissioners, as the governing body of a county in Nevada, is a public body as defined in NRS 241.015(4) and is subject to the OML.

The OML requires the following to be included on the public notice agenda for a meeting:

¹ The Complaints also allege that including a first public comment period is required by the Board’s Rules of Procedure and its removal violates those Rules. As the Rules of Procedure are Board created and do not fall within NRS Chapter 241, the OAG does not have jurisdiction over them and will not address the allegation in this opinion.

Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken:

- (I) At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before adjournment of the meeting; or
- (II) After each item on the agenda on which action may be taken is discussed by the public body, but before the public body takes action on the item.

The provisions of this subparagraph do not prohibit a public body from taking comments by the general public in addition to what is required pursuant to sub-paragraph (I) or (II). Regardless of whether a public body takes comments from the general public pursuant to sub-paragraph (I) or (II), the public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item some time before adjournment of the meeting.

NRS 241.020(3)(d)(3).² In addition, the failure of a body to call for public comment as specified on the agenda for a meeting and in accordance with the minimum statutory requirements is a violation of the OML. *In re Board of Directors of Douglas County Sewer Improvement District No. 1*, OMLO 13897-201 at 8 (Dec. 2016).

For the meeting at issue, the agenda included a statement that the Board would be accepting public comment on action items individually as permitted by NRS 241.020(3)(d)(3)(II) and a general public comment period near the end of the meeting as required by NRS 241.020(3)(d)(3). The Complainants do not dispute that public comment was received at the times listed on the agenda. Complainants' main objection is that there was no general period of public comment at the beginning of the meeting. Because the OML specifically provides for the public comment option the Board chose, the OAG cannot find it to be an unreasonable option. Thus, the OAG does not find a violation of the OML in this respect.

As for the Chair's refusal to include an agenda item regarding the public comment policy, the OAG also does not find a violation of the OML. The OML does not address how agenda items are chosen. It only requires that items the

² The OAG notes that the language of this public comment section was changed by Assembly Bill 219 of the 2023 Legislative Session. However, Assembly Bill 219 did not go into effect until after the date of the meeting at issue.

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body intends to discuss be listed on the agenda so that public is provided notice.
NRS 241.020(3).

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: Michael W. Large, Deputy District Attorney
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