

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

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

July 1, 2024

Via U.S Mail

Vickie DiMambro
[REDACTED]

Kersten A. Schreier
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-497
Palomino Valley General Improvement District Board of Trustees**

Dear Mrs. DiMambro and Ms. Schreier:

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 Palomino Valley General Improvement District Board of Trustees (“Board”) regarding its October 19, 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 the agenda, draft minutes and recording of the Board’s October 19, 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 October 19, 2023. Agenda Item 3.a of the public notice agenda read:

Consider the Character, Alleged Misconduct and/or Professional Competence of Contract Worker Catherine A. Glatthar, and Potential Administrative Action Against Ms. Glatthar to Include Termination of Ms. Glatthar's Contract with the PVGID (Requested by Trustee Baker)

Agenda Item 3.a was called early in the meeting and began with the Chair introducing the item and some Board discussion. The Board then called for public comment on the item, during which time the Board continued to discuss the item amongst themselves and with the public for about 45 minutes. The discussion occasionally strayed to issues unrelated to the agenda item such as animosity between Board members and staff, but no deliberation or action occurred on other issues. A motion was made to terminate the contract with Ms. Glatthar and the Board called for another public comment period at which no comments were made. The Board then voted to pass the motion.

As soon as the motion had passed, a staff member announced that she would be terminating her contract with the Board in response to its actions. A brief discussion then took place among Board members and the Board's attorney regarding who would take notes for the meeting as it was usually Ms. Glatthar's duty. The Board's attorney verified the meeting was being recorded and no decision was made as to who would prepare the minutes for the meeting.

After the meeting, Trustee Helton and the Board's attorney had another discussion regarding who would prepare the minutes for the meeting as Trustee Helton wanted the Board's attorney to do it. Other members may have overheard the conversation but did not participate in it. No decision was made at this time who would prepare the minutes. A new staff member was hired at the Board's November meeting and that staff member prepared draft minutes from the meeting recording.

The Complaints allege that the Board violated the OML by (1) straying beyond the agenda statement for Item 3.a in violation of the clear and complete agenda requirement, and (2) by a quorum of the Board deliberating with the Board's attorney after the meeting ended on who would prepare the minutes.

LEGAL ANALYSIS

The Palomino Valley General Improvement District Board of Trustees is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

1. The deliberation and action taken under Item 3.a on the Board’s October 19, 2023, stayed within the clear and complete statements of the topics scheduled to be considered for the meeting.

An agenda for a meeting of a public body must include a “clear and complete statement of the topics to be considered during the meeting.” NRS 241.020(3)(d)(1). The “clear and complete statement” requirement of the OML stems from the Legislature’s belief that ‘incomplete and poorly written agendas deprive citizens of their right to take part in government’ and interferes with the ‘press’ ability to report the actions of government.” *Sandoval v. Bd. Of Regents of Univ.*, 119 Nev. 148, 154 (2003). Strict adherence to the “clear and complete” standard for agenda items is required for compliance under the OML. *Id.* The OML “seeks to give the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” *Id.* at 155. However, the OAG applies a reasonableness standard in determining whether an agenda item is clear and complete. *In re Board of Veterinary Medical Examiners*, OMLO 13897-363 at 5 (Jan. 8, 2021).

Here, the agenda item at issue provided that the Board would consider the performance of Ms. Glatthar and whether to terminate the Board’s contract with her. Most of the Board’s discussion centered on Ms. Glatthar’s performance and history with the Board and whether to terminate her contract. Some discussion prior to the motion strayed into irrelevant topics, but none of that discussion rose to the level of deliberation on any topic other than whether to terminate the contract. Public body members may make comments irrelevant to an agenda item so long as they do not deliberate or take action on an item that is not included on the agenda. NRS 241.015(3).

The Complaints also allege that the five-minute discussion that occurred immediately after the vote on Item 3.a regarding minutes amounted to action by the public body as to who would take notes for the meeting. It is very difficult to discern what occurred during that five-minute period as many individuals were arguing and talking over each other, but no vote was taken. The recording indicates the discussion was primarily the Board members’ effort to receive advice from their attorney regarding compliance with the OML’s requirements with respect to minutes. No vote was taken and the OAG

has insufficient evidence that any decision was reached with respect to minutes. Thus, the OAG does not find a violation of the OML in this respect.

2. The OAG does not find a violation of the OML with respect to the post-meeting conversation between Trustee Helton and the Board's attorney.

The OML was enacted to ensure public access to government as it conducts the people's business. NRS 241.010. The spirit and policy behind the OML, as with other so-called "sunshine laws" favors meetings to be as open as possible. *McKay v. Board of Supervisors of Carson City*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986); *Chanos v. Nevada Tax Com'n*, 124 Nev. 232, 239, 181 P.3d 675, 680 (2008) ("[M]eetings of public bodies should be open 'whenever possible' to comply with the spirit of the Open Meeting Law.").

The Complaints allege that three trustees, a quorum, met with the Board's attorney and deliberated or acted regarding who would prepare the minutes for the October 19 meeting after the meeting ended.

Pursuant to NRS 241.015(3), a meeting means "the 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." Deliberation means "collectively to examine, weigh and reflect upon the reasons for or against the action. The term includes, without limitation, the collective discussion or exchange of facts preliminary to the ultimate decision." NRS 241.015(2). The OML is not intended to prohibit every private discussion of a public issue. *Dewey v. Redevelopment Agency of City of Reno*, 119 Nev. 87, 94 (2003). Instead, the OML only prohibits collective deliberations or actions where a quorum is actually or collectively present. *Id.*

The evidence indicates that Trustee Helton and the Board's attorney had a discussion regarding who would prepare the minutes for the meeting in the meeting room and continuing down the stairwell and into the parking lot. The evidence further indicates that two other trustees were present in the meeting room and may have overheard part of the discussion but did not participate in it. As the OAG does not have evidence of a collective discussion between a quorum of members outside of a meeting, we do 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

cc: Francis Flaherty, Esq.
Dyer Lawrence, LLP
2805 Mountain Street
Carson City, NV 89703