

ADAM PAUL LAXALT
Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701

J. BRIN GIBSON
First Assistant Attorney General

NICHOLAS A. TRUTANICH
Chief of Staff

KETAN D. BHIRUD
General Counsel

October 18, 2018

Via U.S. Mail and Electronic Mail to

Jeffrey Church

**Re: Washoe County School District – Open Meeting Law
Complaint, OAG File No. 13897-293**

Dear Mr. Church:

The Office of the Attorney General (OAG) is in receipt of your Complaint alleging a violation of the Open Meeting Law (OML) by the Washoe County School District–Board of Trustees (Board). Your Complaint alleges that the Board required persons who give public comment to provide their name and fill out a public comment card and that the Board prohibited comment on “school issues on the agenda. . . .” at the June 12, 2018 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; and NRS 241.040. In response to the Complaint, the OAG reviewed the Complaint and its attachments. The OAG reviewed the video tape of the meeting which is posted for the public on the YouTube website and requested and received a response from the Board’s Office of the General Counsel (OGC).

The OAG subsequently received and reviewed the Complaint you filed in the Second Judicial District Court against the Truckee Meadows Flood Management Authority and the Answer thereto. There was also a statement concerning this Complaint which was reviewed.

FACTUAL BACKGROUND

The Board is a “public body” as defined in NRS 241.015 (4), subject to the OML. According to your complaint, the Board required you to give your name and fill out a public comment card. The Board’s Agenda item 1.04 for the meeting indicates that “A ‘Citizen’s Request to Speak’ card should be filled out and submitted to the Recording Secretary before speaking during the Public Comment section, which must at least include the name of the speaker.” June 12, 2018 agenda, p. 1. The OAG notes that the language used in the agenda is permissive and not mandatory.

You appeared before the Board in a vest that had your name prominently displayed and introduced yourself as a candidate for the Board. Your comments were partially directed at the two issues considered herein.

The Board was contacted and provided a response to the Complaint through its Office of the General Counsel. The response indicates that the Board does require the Speaker’s Cards as a reasonable restriction on the time, place and manner of public comment. However, the Board denied it has a policy to prevent speakers who refuse to give their name from making public comment. The Board provided examples of Speaker’s Cards which display only the word “Anonymous” in place of the speaker’s name. The Board informs us that it allowed these persons to speak without giving their name.

The Board indicated that it does limit the initial public comment period to issues that are not already on the agenda for that meeting. The Board indicates that it considers the limitation a reasonable accommodation to the public rather than eliminating the initial public comment period entirely as allowed in NRS 241.020 (2)(d)((3))(I).

DISCUSSION AND LEGAL ANALYSIS

1. SPEAKER’S CARDS

Your complaint that the Board does not allow persons to speak without disclosing their name does not appear to be factually supported by the materials provided to the Attorney General’s Office. The Board indicates that the use of speaker’s cards helps it to maintain order and to maintain the public record required by NRS 241.035 (1)(d). However, the agenda item suggests that the cards are not mandatory. The Board has allowed persons to use the name “anonymous” and speak before the Board. The practice of the Board is

a reasonable time, place, and manner restriction on public comment. The OAG finds that there is no violation of Nevada's OML.

2. LIMITATIONS ON INITIAL PUBLIC COMMENT PERIOD.

Your complaint alleges that the Board has violated Nevada's OML by restricting comment during the initial public comment period at the beginning of the meeting. The Open meeting law allows public bodies to control when comment is taken during the meeting. NRS 241.020 (2)(d)((3)) provides that

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 the 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 Board is required to allow public comment in two alternatives, and is not required to provide public comment at the beginning of the meeting if it allows it on each action item and on non-agendized items before the end of the meeting. The Board has elected to allow public comment before the meeting, during agenda items, and at the end of the meeting, and has thus provided more opportunities for public comment than are required by statute. Under the circumstance, restricting public comment to issues not on the agenda during the initial public comment period is a reasonable accommodation to those who wish to comment, but cannot wait until the end of the meeting.

The Open Meeting Law requires that "public body must allow the general public to comment on any matter that is not specifically included on the agenda as an action item at some time before adjournment of the meeting." NRS 241.020 (2)(d)((3)). The Board in this matter allows public comment on matters not on the agenda at both the beginning and end of the meeting. This office finds that this is a reasonable time, place, and manner restriction on public comment and is not a content-based restriction on speech.

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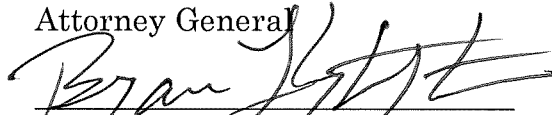
The Board allows public comment on the agenda items during the agenda item. This practice is in compliance with NRS 241.020 (2)(d)((3))((II)) and allows the Board to consider comments in the context of the decision before the Board. The OAG finds that it is a reasonable time, place, and manner restriction on public comment. The OAG finds that there is no violation of the OML.

CONCLUSION

The OAG finds that the Board does not refuse to allow public comment to those who request to remain anonymous before the Board and the Complaint in this regard is unfounded. The practice of limiting initial public comment period to issues not on the agenda is reasonable and not in violation of the OML.

Sincerely,

ADAM PAUL LAXALT
Attorney General



BRYAN L. STOCKTON
Senior Deputy Attorney General
(775) 684-1228
BStockton@ag.nv.gov

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c: Neil A. Rombardo, Esq., Chief General Counsel, Washoe County
School District