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May 24, 2017

via U.S. Mail

Ann M. Kee
186 Gull Drive
Walker Lake, NV 89415

Re: Open Meeting Law Complaint, A.G. File No. 13897-228
Mineral County School District Board of Trustees

Dear Ms. Kee:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging that the Mineral County School District Board of Trustees (Board) violated the Nevada Open Meeting Law (OML). The substance of the complaint is that a quorum of the Board engaged in serial email communications on or about January 30, 2017, in which your character, alleged misconduct, and professional competence were considered.¹

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. In response to the complaint, the OAG reviewed the public notice, agenda, and written minutes for the Board's January 26, 2017, meeting, together with copies of certain emails and a response to the complaint from the Mineral County District Attorney's Office.

FACTUAL BACKGROUND

The Board is a "public body" as defined in NRS 241.015(4), subject to the OML. Agenda item No. 8 for the Board's January 26, 2017, meeting were identified for possible action and read as follows:

¹ To the extent you have also alleged retaliation; you have failed to state a claim under the OML.

8. Temporary position for General Office Clerical in the District Office, 15 hours per week, for 15 weeks.
(Discussion/For Possible Action)

At the Board's January 26, 2017, meeting, after some discussion, Trustee Tyler Viani moved to table agenda item No. 8 "to get a better grasp on exactly what the needs (of the District Office) are." The motion was seconded by Trustee Sheryl Samson and passed with Viani, Samson and Trustee Schyler Hagen voting in favor of the motion and Board President Keith Neville voting in opposition.

On January 30, 2017, Samson sent the following email to District Superintendent Walt Hackford, Neville, and Viani relating to agenda item No. 8:

To re-address the issue of a temporary assistance employee for the district office employees, I would like to have a list of the Para-Pros that have been added to the HES system, but I believe were added into the budget as a help. Also, before I came to the Board, I remember that temporary assistance had been given to the HES office staff, which eventually became full time staffing, but I did not have any proof of this before me at the last Board meeting.

I would like to address the issue at hand, as it is obvious that there is a competition or adverse concern as to who qualifies for this special assistance – even if temporary. For me this is not off the table yet and it needs to be continued, as I stated. Later there will be a need to possibly review the work loads, but for this emergency and our Grant Fundings, we must re-address this and have facts before us as to how it was handled in the past, and to be fair in our procedures.

Thank you Supervisor Hackford, President Neville and Vice President Viani,

Sheri Samson

Hackford responded to all three Board members in a lengthy email with additional information on January 31, 2017, which included, in relevant part, the following statements:

One day I was asked, by these ladies, if they might add a p/t, temporary, office aide to assist with phones and filing during the crunch time at the end of the year. It amounted to \$6,400 (of a \$5.5M district budget). We all feel that we were blindsided with the “**first opposition**” of any kind about asking for additional help. We were blindsided by both unions as they flexed their muscle to denounce any attempt to assist these ladies. Two Board members appeared opposed from the very onset that this item was introduced – meaning that somebody/s on the union side had “possibly” prepped them before the meeting? All of the ladies in my office and many of the bystanders in attendance at the Board meeting recognized that the issue was dead before it arrived. Our entire district office was offended, embarrassed, and angered over this organized opposition to a simple, inexpensive, hire of some temporary assistance in our office. This protest had been well prepared and premeditated to squelch our attempts to get that which I had provided for all other schools in our district – some needed assistance when they were overwhelmed. The Classified Union turned on their own members. The Certified Union offered us a veiled threat that if we approved this position - they would grieve! How respected and appreciated are these ladies in our district? And how respected am I as Superintendent when such a conspiracy is set in motion, against one of my recommendations, without so much as a visit to my office and a discussion on this matter? It’s called professional courtesy – something that I offer to all employees in MCSD each and every day. Instead, I am blindsided by well organized opposition at the very moment the discussion item was introduced.

It was my intention to help heal the wounds of a hurting school district when I became Superintendent. Our Classified and Certified staff had been badly treated by the previous 4 Superintendents. It was my goal to work with both unions, all staff, students, and parents/community, to build a team of trusting, respectful, appreciative employees. I have offered trust, respect, and fair treatment to all – and I expected the same in return. All that had been gained cannot be repaired

following this Thursday's Board meeting. Did people really think this through before plotting such an opposition against a team of ladies that give everything to this district? Was that really worth \$6,400?

The complainant is a District employee and President of the Mineral County Classified School Employees Association.

On February 1, 2017, District Human Resources Officer Hope Blinco sent an email to Hackford, Neville, Samson and Viani correcting one of the Superintendent's statements in his January 31st email. On that same date Viani forwarded the email chain to Hagen, the only Trustee not included in the original exchange.

DISCUSSION AND LEGAL ANALYSIS

The Nevada Legislature intends that the actions of public bodies "be taken openly and that their deliberations be conducted openly." NRS 241.010(1); *see also McKay v. Bd. of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) ("the spirit and policy behind NRS chapter 241 favors open meetings"). Legislative intent further states that "electronic communication, must not be used to circumvent the spirit or letter of this chapter to deliberate or act, outside of an open and public meeting, upon a matter over which the public body has supervision, control, jurisdiction or advisory powers." NRS 241.016(4).

The Nevada Supreme Court has held that "a quorum of a public body using serial electronic communication to deliberate toward a decision or to make a decision on any matter over which the public body has supervision, control, jurisdiction or advisory power violates the Open Meeting Law." *Del Papa v. Board of Regents*, 114 Nev. 388, 400, 956 P.2d 770, 778 (1998). "Deliberate" is defined in NRS 241.015(2) as "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 241.033 prohibits a public body from holding a meeting to consider the character, alleged misconduct, professional competence, or physical or mental health of any person unless it provided written notice to the person of the time and place of the meeting and received proof of service of the notice. *See* NRS 241.033(1)(a) and (b).

If the Board collectively deliberated upon agenda item No. 8 outside of a public meeting, this would clearly constitute a violation of the OML. The Board has come perilously close to violating this prohibition. Fortunately, this email exchange appears to have fallen just short of interactive communications among the Trustees. While the email communication was initiated by Trustee Samson to Superintendent Hackford and a quorum of the Board, the only responses were provided by District staff, not other

Trustees. Nor is there is no evidence that the Board sought to intentionally evade the OML in this instance.

Furthermore, if the Board considered the character, alleged misconduct, or professional competence of the complainant without proper notice, this would clearly constitute a violation of the OML. However, the statements made by Superintendent Hackford in his January 31st email, which do not even name the complainant, do not constitute the Board's consideration of the character, alleged misconduct, and professional competence of the complainant. Consequently, the notice requirements of NRS 241.033(1) do not apply.

CONCLUSION

Although there may not have been an actual violation of the law in these circumstances, the Trustees, Superintendent Hackford and all District staff should be mindful of engaging in any email communications that may undermine the public's faith in transparency and open government. The Board is warned against engaging in serial electronic exchanges to deliberate upon matters over which it has supervision, control, jurisdiction or advisory powers; such an action may result in prosecution by the OAG.

Furthermore, the OAG strongly recommends that the Mineral County School District Board of Trustees members and staff receive training in the OML; the OAG is available to provide OML training upon request. The OAG will be closing its file this matter.

Sincerely,

ADAM PAUL LAXALT
Attorney General

By: 
Brett Kandt
Chief Deputy Attorney General

WBK/klr
cc: Sean Rowe, Mineral County District Attorney