



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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March 25, 2013

Keith J. Tierney
1729 O'Farrell Court
Reno, Nevada 89503

Re: Open Meeting Law Complaint / AG File No. 12-041
Washoe County Senior Services Advisory Board

Dear Mr. Tierney:

We received your Open Meeting Law (OML) complaint. We investigated your allegation that you were denied notice that item 10b was an action item on the Washoe county Senior Services Advisory Board agenda for December 5, 2012. You have alleged you were prepared to conduct an evidentiary hearing of your appeal previously filed with the Board. You also alleged you were not allowed to comment about this purported denial of due process, nor were you able to present your case to the Board; instead, you were gaveled down.

We reviewed the Board's December 5, 2012, agenda, the audio of the relevant portion of the Board's meeting (item 10b), and your written appeal (WCC 45.485) of Director (Tarbutton's) decision "to reject or modify use of certain grant" monies that "resulted in denial of requested services or privileges of the Department's programs." We also reviewed the Board's response to your OML complaint.

The Attorney General of the State of Nevada has primary jurisdiction over the investigation and resolution of complaints alleging violations of the OML, NRS Chapter 241. The Attorney General has jurisdiction to investigate OML complaints and to seek civil remedies, including injunctive relief, to require compliance with the OML, or to prevent violations of the OML. A criminal misdemeanor penalty and a monetary penalty are also authorized relief in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

Our conclusion following review of your allegations, the agenda and the audio of the meeting is that agenda item 10b did not give notice that it would hear your appeal of Director Tarbutton's decisions about use of grant funding for the Washoe County Senior Services Department. Consequently, there was no violation of the OML because the Board had not agendized a hearing of your appeal regardless of whether item 10b had been denominated as an action item or not.

The OML requires that the general public be given notice of an action item through its published agenda, but it does not contemplate individual notice of action items. The OML requires that each public body agenda item be denominated "for possible action" only if action by the public body may be taken. This denomination was not done by the Board on its December 5, 2012, agenda. Some confusion occurred between the Chair, who can be heard on the audio agreeing that the item was an action item, and counsel who clearly stated that it was not an action item.

But whether it was an action item or not, it is equally clear that the item indicated the Board would hear a comment from Director Tarbutton on your appeal, not that an appeal hearing would take place, or that any action was contemplated. Item 10b did not indicate that the Board would hear an appeal authorized by WCC 45.485. To this extent, item 10b language was consistent with what occurred. There was no confusion between the Board and Director Tarbutton.

The failure to correctly denominate the item as an action item or as an informational item did not create a legal right to an evidentiary hearing of your appeal, nor did the confusion about whether the item had been correctly denominated create anything other than a procedural OML violation. The phrase "for possible action" does not indicate that a public body must take action on the matter. The phrase only indicates that action is a possibility. Failure to properly denominate item 10b only requires this office to notify the Board to comply with NRS 241.020(2)(c)(2). No further action by this office is necessary.

Furthermore we do not find any evidence to support your allegation that your comment was gaveled down because you had previously filed an OML complaint (still pending at that time) or that any of the Director's comments (before you spoke) contributed to, or were in violation of the OML. The Director's comments advised the Board that your Appeal was improper as WCC 45.485 only supports an appeal from denial of services to an individual. He said that WCC 45.485 would not support an appeal from his management decisions regarding use of grant funds by the Program (SSAB). He did suggest that an appeal could be made to his boss or the County Manager. Your comments were received during discussion of the item and in public comment only a few moments later. There was no evidence on the audio that you were gaveled down.

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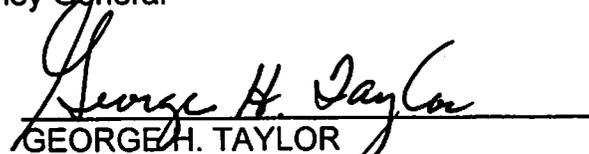
We do not find that failure to properly denominate the agenda item "for possible action" or as an informational item, constituted a fundamental OML error that would require further action from this office.

We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:


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GHT/CG

cc: Blaine Carlidge, Deputy District Attorney
Grady Tarbutton, Director Washoe County Senior Services
Board Members:
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Karen Davis
Rob Morrison
Philip Horan
Kitty Jung
Barbara Boniface
Shirley Legoy
Jill Andrea
Dennis Chin
Diane France
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