



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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March 28, 2013

Barry Bouchard
P.O. Box 60313
Reno, Nevada 89506

Re: Open Meeting Law Complaint / A.G. File No. 12-040
Washoe County District Board of Health

Dear Mr. Bouchard:

This Office has investigated your Open Meeting Law (OML) complaint against the Washoe County District Board of Health (Board). Your complaint alleged the Board acted upon an agenda item after the Board decided to pull the item from the agenda. Three items were pulled so that they could be placed on a future regular meeting agenda for consideration.

During discussion of an item presented by Dr. Joseph P. Iser, District Health Officer, the Board was asked to consider voting to approve a letter to REMSA, the franchisee provider of ambulance services in Washoe County, Reno and Sparks. The letter asked REMSA to consider renegotiation of the terms of the franchise agreement between REMSA and the three local governments. The letter had been reviewed and approved by the Reno and Washoe County managers. Chairman of the Board, Matt Smith, stated it would be sent if the Board was in agreement.

Following further discussion, but no vote, counsel to the Board interrupted the discussion and informed the Board they could not take action to approve sending the letter. Item 13, the item being discussed, was not specific enough to allow the Board to take action. The agenda needed to include "approval of the letter to REMSA" language before a vote could take place. Counsel recommended putting the matter on the next regular meeting agenda with specific language authorizing a vote to approve the letter.

Further discussion provided a solution. Counsel agreed that the OML would not be offended if Chairman Smith sent the letter under his individual signature without a vote from the Board. The matter of the letter could then be agendized for a Board vote

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at the next regular meeting. The Board did not vote to approve the letter at the December 6, 2012 meeting; instead it was placed on the December 20, 2013 agenda for a Board vote.

The Board relied on advice of counsel before Chairman Smith determined he would send the letter under his signature without support of a vote of approval by the Board. This was not an OML violation. As early as 1981, this Office has recognized that public bodies should be encouraged to rely upon advice of counsel and not be punished for doing so. In Op. Nev. Att'y Gen. No. 81-A (February 23, 1981), the Office of the Attorney General opined when members of a public body rely on advice of counsel, they should not be held to know that a violation occurred. OPEN MEETING LAW MANUAL, § 11.10 (11th ed. 2012). The solution agreed to by the Chairman was not an OML violation, but it is worth remembering why counsel is there to provide advice.

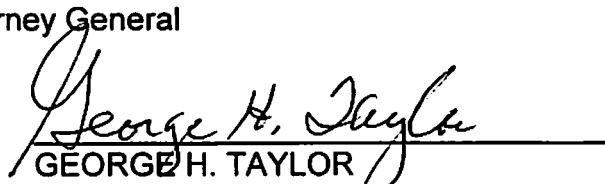
The approval of the letter was re-agendized for the next regular meeting, which was the suggested remedy requested in the complaint.

We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:


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GHT/cg

cc: Leslie H. Admirand, Deputy District Attorney
Dr. Joseph Iser, District Health Officer
Board Members:
Matt Smith, Chairman
Kitty Jung, Vice Chairman
George Furman, M.D.
Sharon Zadra
George Hess, M.D.
Denis Humphreys, O.D.
Julia Ratty, Councilwoman