



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

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February 26, 2013

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

Re: Open Meeting Law Complaint / AG File No. 12-039
Washoe County Senior Services Advisory Board

Dear Mr. Tierney:

This Open Meeting Law (OML) complaint alleged that a subcommittee of the Washoe County Senior Services Advisory Board (the parent public body) (Board) met and deliberated toward a decision regarding the disbursement of tax dollars, grants, and Washoe County District Court fees.

The Attorney General has jurisdiction to investigate allegations of violations of NRS Chapter 241, the Open Meeting Law. This office may seek civil remedies against public bodies, including injunctive relief, to require compliance with the OML, or to prevent violations of the OML. A criminal misdemeanor penalty and a monetary penalty for violations of the OML are also authorized relief against individuals in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

We opened an investigation into the allegations of your complaint. We reviewed the minutes of all meetings of the Board relevant to this complaint. The Washoe County District Attorney's office complied with our request for an explanation in defense of the allegation in the complaint, on behalf of the Board. We received and reviewed audio recordings of two meetings of the Board. These two public meetings occurred on October 24, 2012 and November 7, 2012.

As a result of the Board recommendation (based on declining revenues to support the Senior Law Project) to the Director of Washoe County Senior Services to provide senior services through a third party, thereby reducing or eliminating the role of the Senior Law Project, a technical assistance workgroup was formed by Director Grady Tarbutton. We reviewed a December 26, 2012 staff report prepared by Grady Tarbutton, Director of Senior Services. This staff report was submitted to the Washoe County Board of County Commissioners through Assistant County Manager, John Berkich, for the BOCC's January 8, 2013 public meeting.

This complaint alleged that on October 30, 2012, a subcommittee of the Board met without notice and agenda to deliberate towards a decision for the disbursement of tax dollars, grants, and District Court fees. There is no recording of the alleged subcommittee meeting on October 30, 2012.

On October 24, 2012, the Board unanimously approved a motion to recommend to Director Tarbutton, that a third party assume the senior services provided by the Senior Law Project and apply for funding from federal and state sources.

The audio recording of the meeting revealed that following the approval of the motion by Director Tarbutton indicated he would fulfill his duty as staff to continue to study options in preparation for a future planned workshop with the Washoe County Board of Commissioners—the ultimate decision maker regarding the future of the Senior Law Project. He asked members of the audience, staff members, certain experts who were present in the meeting, and two members of the Board to provide assistance in a future staff meeting.

After review of the audio of the October 24, 2012, we believe the Board did not appoint a subcommittee either formally (by vote) or informally. Following approval by the Board of its motion to recommend that a third party assume the services being provided by Senior Law Project, Director Tarbutton was asked whether he was accepting the Board's recommendation. He replied that he had no choice, but the Board members quickly denied that statement adding their motion was only a recommendation and that the Director clearly had a choice.

Further discussion between Director Tarbutton and the Board indicated he viewed that his role before the next scheduled Board meeting on the November 7, 2012, was to give an update on progress he and his staff had made regarding crucial issues that may still be in contention. All of the foregoing was without direction from the Chair of the Board. Director Tarbutton publicly asked for volunteers to assist him and staff to "give an update" on his staff's work regarding the "how, what, and when" issues before the next Advisory Board meeting on November 7, 2012.

There is nothing in this record to support characterization of the volunteer group formed by Director Tarbutton at the end of the October 24, 2012 Board meeting as a subcommittee of the Board. There is no evidence in the record that the subcommittee was created as a subterfuge to avoid the OML. The entire discussion was recorded and Director Tarbutton's formation of a technical assistance workgroup was also recorded. There is no evidence that formation of this group occurred behind closed doors. The group was not formed to make recommendations to the Board. The group was invited to participate with Director Tarbutton and his staff and to advise him.

The OPEN MEETING LAW MANUAL, § 3.04 (11th ed. 2012) provides relevant guidance to determine whether Mr. Tarbutton's technical assistance group was in fact a public body. Section 3.04 states that:

[T]o the extent that a group is appointed by a public body and is given the task of making decisions for or recommendations to the public body, the group would be governed by the Open Meeting Law. See OMLO 2002-017 (April 18, 2002) and OMLO 2002-27 (June 11, 2002). *But see* AG File No. 07-030 (September 10, 2007)(OML does not apply to the appointment of a citizen advisory panel to advise Las Vegas City Manager when acting in his official capacity) (A.G. File No. 07-030, September 10, 2007).

As this office opined in 2007 in a similar case, the appointment of a citizen advisory panel to advise the Las Vegas City Manager action in his official capacity was not a panel subject to the OML. It seems the creation of Director Tarbutton's technical assistance panel was similar to the creation of the City Manager's panel in AG File No. 07-030. Director Tarbutton, acting in his official capacity, is not subject to the OML. The panel created by him, even though it contained two members of the Advisory Board (less than a quorum), was not subject to the OML. There is no evidence that Director Tarbutton's panel made any recommendations to anyone other than to him.

Our review of the recording of the November 7, 2013 public meeting of the Board provided no evidence of recommendations to it from Director Tarbutton's panel. At the November 7, 2012 public meeting, the Board reworded its earlier October 24, 2012 motion to provide senior services through a single third party, which was approved. The rewording was only to make the Board's recommendation clearer. Nothing else was changed.

We believe that Director Tarbutton's panel was not a subcommittee of the Board; instead it was a group to advise only the Director as he prepared for a workshop with the Washoe County Board of County Commissioners. This group was not subject to the OML.

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We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By: 
GEORGE H. TAYLOR
Senior Deputy Attorney General
(775) 684-1230

GHT/CG

cc: Blaine E. Cartlidge, Deputy District Attorney
Grady Tarbutton, Director, Senior Services
Board Members:
Connie McMullen, Chair
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