



STATE OF NEVADA  
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August 26, 2013

Bob Hastings, Lyon County Commissioner  
P. O. Box 686  
Dayton, Nevada 89403

Re: Open Meeting Law Complaint / AG File No. 13-023  
Lyon County Library Board of Trustees

Dear Mr. Hastings:

We have investigated your Open Meeting Law (OML) Complaints that allege the Lyon County Library Board of Trustees (Board of Trustees) violated the OML at its June 11, 2013, public meeting. The Complaints allege that the Trustees secretly arranged to recommend one of two applicants for a vacancy on the Board of Trustees. Such allegation is a claim that a serial communication or walking quorum occurred. NRS 241.015(2)(a)(2).

We investigated the allegation of your OML Complaint that the Trustees discussed and or pre-arranged their vote on a recommendation for an appointment to the Board of Trustees, prior to its meeting on June 11, 2013. We reviewed the agenda and minutes of the June 11, 2013, public meeting. We also received and reviewed the audio of the meeting and statements from each of the Trustees who were asked to respond to the allegations in the Complaints.

Two issues need to be resolved. First, did a quorum of the Board of Trustees privately discuss and decide that Mr. John Hartley would receive the recommendation for the appointment to the vacancy on the Board of Trustees to represent Dayton to the Board of County Commissioners. Secondly, if true, does the allegation that the vacancy on the Board of Trustees was not properly noticed to the public violate the OML?

After review of the affidavits from each of the Trustees, the meeting minutes, and review of the audio recording of the June 11, 2013, meeting, we do not find an OML violation based on either Complaint.

Mary Eichar, Chairwoman, began the Board of Trustees' consideration of agenda Item #11 to consider recommending a person to fill a vacancy on the Board for Dayton. Her early comments created some confusion about whether a decision had already been made. She said, "Frankly, it's been my understanding, *my sense of the understanding*, is that we have basically agreed that he [John Hartley] would be our appointment from Dayton." The first impression from these words is that the Trustees may have agreed in private to recommend John Hartley to fill the Trustee's vacancy, but after our investigation and our review of Ms. Eichar's statement, we feel that there was no serial communication among a quorum of the Trustees.

Ms. Eichar hesitated in mid-sentence and regrouped stating that it was her "sense of the understanding" that Mr. Hartley would be recommended. Ms. Eichar's "sense of the understanding" was based in part on the fact that the vacancy on the Board had existed for more than a year. Mr. Hartley had expressed an interest in the vacancy for the Dayton opening during the Trustee's April meeting. Since he was the only applicant, Ms. Eichar was surprised to learn, on the day of the meeting, that Ms. Nadine Hastings had expressed an interest in the Board only three days prior. Ms. Hastings' interest had not been communicated to Ms. Eichar until just before the meeting, so she was clearly surprised. Review of the audio persuades us that she may have been confused about how to handle two applicants for the one vacancy, since only shortly before item #11 appeared to be routine, having had only one applicant. Vacancies on the Board of Trustees are chronic and can remain vacant for many months.

The issue for resolution is whether a quorum of the Trustees secretly agreed to recommend Mr. Hartley to the BOCC. Review of each Trustee's statement convinces us that no such secret arrangement had taken place and that until June 11th, there was only one applicant as far as the Trustees knew. Why would they meet secretly to agree to recommend Mr. Hartley when he was the only applicant? Mr. Hartley had attended several meetings beginning with the April 23, 2013, meeting, when he was asked to submit a letter of interest requesting consideration for the vacancy. Ms. Eichar stated in her response to the Complaint that "no decision or deliberation was made" during the April meeting. Furthermore, she said, "I know of no other discussion [other than the discussion in the April 23rd meeting] or agreement regarding Mr. Hartley as an appointee" before the June 11th meeting.

As of the June meeting there were only four members on the Board of Trustees. Besides Ms. Eichar's statement, Linda Conlin, Rick Stanfeld, and Randy King each submitted a statement indicating there had not been any previous discussions, deliberations, or agreements made with regard to Mr. Hartley's application and possible recommendation for the vacant seat on the Library Board of Trustees.

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Finally, the second Complaint alleges that the Board of Trustees failed to notify the public that a vacancy existed. Ms. Hastings explained this to the Board on June 11th when she said she only found out about the vacancy on Saturday (June 8th). There was much discussion about the cost of advertising in the newspaper.

These issues are not related to the OML, even if true. Under the OML, the minimum notice to the public requires that a public body give written notice of a meeting before 9 a.m., 3 days before the day of the meeting. Any other notice to the public such as newspaper legal notices is outside the purview of the OML. The notice and agenda for the June 11, 2013, meeting was timely posted; that notice is the only notice that concerns the OML.

Finding no violation, we are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO  
Attorney General

By:



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GHT/rmh

cc: Bob Auer, Lyon County District Attorney, Counsel to Board  
Board of Trustees of Lyon County Library  
Mary Eichar, Chairperson  
Rick Stanfield, Member  
Linda Conlin, Member  
Randy King, Member