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**OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA**

In the Matter of:

WASHOE COUNTY SCHOOL DISTRICT;
and its BOARD OF TRUSTEES.

AG FILE NO.: 13897-141
OMLO NO.: 2015-01

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

BACKGROUND

On March 24, 2015, the Reno Gazette-Journal (RGJ) submitted a complaint alleging that the Washoe County School District (WCSD) Board of Trustees (Trustees), a public body, violated the Nevada Open Meeting Law (OML), Chapter 241 of the Nevada Revised Statutes (NRS). The RGJ alleges that agenda item 7.02 of the Trustees' open meeting agenda for March 24, 2015, did not provide notice that the Trustees would appoint a permanent School District Superintendent.¹ The RGJ alleges that the vote and selection of Traci Davis (Davis) as Superintendent violated NRS 241.020(2)(d)(1) and (2), which require an agenda to provide a clear and complete statement of topics and action scheduled to be considered during the meeting.²

¹Trustees' agenda item 7.02 states: "DISCUSSION ON SUPERINTENDENT SEARCH (FOR DISCUSSION AND POSSIBLE ACTION)."

² NRS 241.020(2)(d)(1)–(3) specifies the fundamental requirements of a public body's agenda:
(d) An agenda consisting of:

1 The Office of the Attorney General (OAG) has jurisdiction to investigate OML
2 complaints. NRS 241.039.³ Public bodies working on behalf of Nevada citizens must conform
3 to OML requirements in open meetings under an agenda that provides full notice and
4 disclosure of discussion topics and any possible action. Agenda items must be clear and
5 complete. NRS 241.020. Action and deliberation must be properly noticed and taken openly.
6 NRS 241.010. The OAG may sue a public body to void an action, or may sue a person or a
7 public body for injunctive relief in a court of competent jurisdiction to require compliance with
8 the OML. NRS 241.037. Criminal and civil penalties, including monetary fines, are also
9 authorized by statute. NRS 241.040. The OAG may issue Findings of Fact and Conclusions of
10 Law following an investigation. NRS 241.039.

11 The OAG's investigation of the appointment of Davis as permanent school district
12 superintendent was primarily based on the OAG's review of the video of the Trustee's meeting
13 and its agenda for March 24, 2015. During investigation by this office, Trustee Angela Taylor
14 (Taylor), who submitted a declaration to the OAG, had been newly appointed to the Board the
15 preceding November. Another declaration was submitted by the in-house legal counsel for the
16 School District, Christopher Reich (Counsel Reich). Their declarations explained their
17 respective roles in events that occurred outside the public meeting on March 24, 2015 during
18 a recess.

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- 22 (1) A clear and complete statement of the topics scheduled to be considered during the meeting.
23 (2) A list describing the items on which action may be taken and clearly denoting that action may be
24 taken on those items by placing the term "for possible action" next to the appropriate item or, if the item
25 is placed on the agenda pursuant to NRS 241.0365, by placing the term "for possible corrective action"
26 next to the appropriate item.
27 (3) Periods devoted to comments by the general public, if any, and discussion of those comments.
28 Comments by the general public must be taken. . . .

³ NRS 241.039 Enforcement by Attorney General; subpoenas; penalty for failure or refusal to comply with subpoena.

1. Except as otherwise provided in NRS 241.0365, the Attorney General shall investigate and prosecute any violation of this chapter.
2. In any investigation conducted pursuant to subsection 1, the Attorney General may issue subpoenas for the production of any relevant documents, records or materials.
3. A person who willfully fails or refuses to comply with a subpoena issued pursuant to this section is guilty of a misdemeanor.

FINDINGS OF FACT

1
2 1. Agenda item 7.02 for the Trustee's meeting on March 24, 2015, entitled
3 "Discussion of Superintendent Search," was intended for discussion of the search for a new
4 superintendent for the School District. During discussion on this agenda item at the meeting,
5 WCSD Human Resources Officer Dawn Huckaby (Huckaby) explained three search options to
6 the Trustees summarizing her assessment of cost and other factors.

7 2. Following Huckaby's presentation, and still under agenda item 7.02, fifteen (15)
8 citizens individually offered public comment to the Board expressing their views on the
9 selection of a superintendent. Most of this public comment, approximately forty (40) minutes in
10 length, supported the candidacy of Davis; however, no public comment suggested her
11 immediate appointment.

12 3. Following public comments on agenda item 7.02, Trustee Lisa Ruggerio
13 (Ruggerio) asked a question regarding the agenda item and the three search options that had
14 been presented by Huckaby for the Board's consideration. Ruggerio announced, "I think it's
15 pretty clear how I feel . . . so just to clarify today, just a question, this is an item [item 7.02] for
16 discussion or action today? Do we have to choose between one of the [three] options or can
17 we just appoint interim Davis today? Would that be allowed under this agenda?"

18 4. Board President John Mayer (President Mayer) looked to Counsel Reich, who
19 sat just behind and to the right of Mayer at the meeting. On the video they appear to have
20 conferred for a moment, and then Counsel Reich answered Ruggerio's question, stating,
21 "Yes, that's part of the process." President Mayer then repeated Counsel Reich's answer
22 aloud. Ruggerio said that was all she had at that time.

23 5. In turn, and following Trustee Ruggerio's questions and Counsel Reich's reply
24 about appointing Davis under agenda item 7.02, several other Trustees offered their personal
25 views about whether they should take immediate action to approve the appointment of Davis
26 as permanent school superintendent. Trustees Howard Rosenberg (Rosenberg), Barbara
27 McLaury (McLaury), Angela Taylor, and President Mayer expressed their support for Davis to
28 lead the School District as the next superintendent without spending any more money to

1 search for other candidates. They were in favor of an immediate vote to appoint Davis.

2 6. Two Trustees who had been elected and were seated on the Board in January
3 expressed their views that the Trustees should not appoint Davis during the meeting because
4 further time was needed to study the search options. Trustee Nick Smith (Smith) expressed
5 his view against a quick appointment of Davis. Trustee Veronica Frenkel (Frenkel) said she
6 wasn't ready to make a selection during this meeting.

7 7. Trustee Rosenberg made a motion that "the Board of Trustees hire Interim
8 Superintendent Traci Davis as the Superintendent of the Washoe County School District,
9 pending contract negotiations." The motion was seconded by Trustee Ruggerio. President
10 Mayer called for the vote. The vote taken was 5-2 in favor of the motion, with Trustees
11 Frenkel and Smith voting against.

12 8. Following this vote, President Mayer called for another vote to make it
13 unanimous, but it failed unanimity by one vote, with Trustee Smith voting against.

14 9. After a short celebration of Davis' appointment and some remarks from Davis,
15 the Trustees resumed their meeting. After an hour and one-half of Board discussion of other
16 agenda matters, President Mayer called a recess.

17 10. Trustee Taylor's declaration states that during this recess she learned from
18 WCSD staff in the hallway just outside the Trustees' meeting room about a newly posted
19 comment on the RGJ's website stating that the Trustees' vote to appoint Davis appeared to
20 have been taken in violation of the OML.

21 11. Taylor discussed the matter with Counsel Reich, who advised her and President
22 Mayer to rescind the Board's prior vote on agenda item 7.02. Counsel Reich made this
23 recommendation pursuant to NRS 241.0365(4). Based upon the available evidence, there
24 was no discussion among the Trustees during the recess about the suggested vote to rescind
25 their appointment of Davis. Taylor states that no poll or vote by the Trustees was taken during
26 the break in the meeting, or at any other time outside the open public meeting, regarding
27 "what to do, if anything, about the possible OML violation that may have occurred by the vote
28 [. . .] to appoint Davis." Counsel Reich's declaration states he did not participate in, nor

1 witness Trustees taking a poll. Counsel Reich states he did not hear any other discussion
2 outside the meeting room that could have constituted an informal vote about reconsideration
3 or rescission of the vote to appoint Davis.

4 12. After the recess but prior to eventual adjournment, Trustee Taylor offered a
5 motion, seconded by Trustee Frenkel, that "the Board of Trustees rescinds the vote to hire
6 Interim Superintendent Traci Davis as the Superintendent of the Washoe County School
7 District, pending contract negotiations; and directs staff to place an item on a future agenda of
8 the Board of Trustees related to the possible appointment of Interim Superintendent Davis as
9 Superintendent of the Washoe County School District." Taylor stated that she had just learned
10 from WCSD staff that they had received an alert from the RGJ that the OML might not have
11 been observed when the Trustees voted to appoint Davis. Following a short discussion, the
12 Trustees unanimously passed Taylor's motion prior to adjournment of the meeting.⁴

13 13. Previously, six members of the WCSD Board of Trustees – current members
14 Mayer, McLaury, Rosenberg and Ruggerio, together with previous Board members David
15 Aiazzi and Barbara Clark – were sued by the OAG in September 2014, based on six (6)
16 counts of OML violations alleged to have occurred on July 22, 2014 concerning former
17 Superintendent Pedro Martinez; the parties settled that complaint and the six (6) Board
18 members agreed to monetary penalties. That settlement was expressed in a "Settlement and
19 Consent Agreement Regarding Violations of Nevada Open Meeting Law; Findings of Fact and
20 Conclusions of Law," executed with the six Board members, including Mayer, McLaury,
21 Rosenberg and Ruggerio, who admitted that they had taken action in a closed meeting that
22 terminated the employment of former School District Superintendent Pedro Martinez, without
23 proper notice and a proper agenda, in violation of NRS 241.020.

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28 ⁴On the Agenda for the Trustees next meeting, on April 14, 2015, agenda item 6.04 states: "(2) the possible appointment, pursuant to NRS 391.110, of current interim superintendent Traci Davis as permanent Superintendent subject to negotiation and approval of an appropriate written employment contract (for discussion and possible action).

1 **CONCLUSIONS OF LAW**

2 1. The Trustees violated the OML on March 24, 2015, when they voted to appoint
3 Davis as permanent Superintendent without proper notice and an agenda item to permit that
4 action. NRS 241.020. Agenda item 7.02 did not provide notice to the public that Davis or any
5 other person could actually be appointed to the office of Superintendent at the meeting.

6 2. The Trustees should have recognized and obeyed the fundamental principle of
7 the OML – there can be no action taken unless it appears on the agenda. Although agenda
8 item 7.02 was identified as an action item, the Trustees erred by exceeding the type of action
9 permissible under that agenda item. Instead, Trustee Ruggerio asked Counsel Reich whether
10 agenda item 7.02 gave the Trustees authority to appoint Davis; Counsel Reich appeared to
11 respond affirmatively, and a vote was taken. Reliance on advice of counsel during a public
12 meeting may be a defense to an OML complaint; however, the facts in this context do not
13 support advice of counsel as a defense.

14 3. Members of a public body are encouraged to discuss with counsel any
15 foreseeable action taken by a public body during a meeting if a member is uncertain of its
16 legality under the OML, preferably before a public meeting. There is no evidence that Counsel
17 Reich had been consulted beforehand on the issue of whether the Trustees could appoint
18 Davis at the March 24 meeting. A full discussion of the agenda item among Counsel Reich
19 and the Trustees was lacking in this instance. Furthermore, advice of counsel may not be
20 defense in any matter where members have previously admitted to facts constituting a similar
21 violation.

22 4. The OML does not provide immunity to members of a public body for reliance on
23 counsel's advice when there are specific facts showing that such reliance was clearly
24 unreasonable. *Brown and Banks on behalf of the State of Minnesota v. Cannon Falls*
25 *Township*, 723 N.W.2nd. 31, 44 (Minn. Ct. App., 2006). Under the facts presented, and in the
26 opinion of the Attorney General, the Trustees' reliance on counsel's advice in this matter was
27 not reasonable.

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1 5. There are notable differences between the previously-admitted violations of the
2 OML that occurred on July 22, 2014 in the matter of former Superintendent Pedro Martinez,
3 and this violation that occurred eight (8) months later on March 24, 2015. The agenda for the
4 July 22, 2014 meeting did not contemplate any discussion or possible action whatsoever
5 about the position of superintendent or then-Superintendent Martinez. By contrast, agenda
6 item 7.02 for the March 24, 2015, meeting permitted discussion of the search for a new
7 superintendent for the School District, but the agenda item was not sufficient for the
8 appointment of a new superintendent.

9 6. The Trustees' rescission of Davis' appointment prior to adjournment of the
10 meeting was timely. NRS 241.0365(4). Their immediate corrective action taken by a vote
11 before adjournment to rescind the prior vote to appoint Davis effectively mitigates the severity
12 of the earlier violation.

13 7. A public body that voluntarily takes prompt corrective action as soon as an
14 alleged violation becomes apparent, as occurred in this matter, strengthens its defense to
15 even a subsequent complaint. The fact that the Trustees unanimously took corrective action
16 during the same meeting, without any objection or resistance from any individual Trustees, is
17 a significant mitigating factor in this violation.

18 EFFECTIVE DATED this 12TH, day of January, 2016.

19 ADAM PAUL LAXALT
20 Attorney General

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22 By: _____
23 Brett Kandt
24 Chief Deputy Attorney General
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