



NEVADA POLICY RESEARCH INSTITUTE

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Thursday, May 27, 2010

Attorney General Catherine Cortez Masto
Nevada Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

Dear Attorney General Masto:

This letter seeks an investigation into the Clark County School District Board of School Trustees (Board) for possible Open Meeting Law violations.

NRS 241.020(2)(c)(3) provides that all meetings of a public body must provide an agenda consisting of “A period devoted to comments by the general public, if any, and discussion of those comments.”

Beginning September 2, 2009, the Clark County Board of School Trustees revised its public meeting agendas to remove the standing item, “RESPONSE TO PUBLIC COMMENT: At this time, discussion may be held on issues raised by the public under Public Hearings of Agenda/ Non-Agenda Items.”

Subsequently, whenever meetings arrive at a remaining standing agenda item, “PUBLIC HEARINGS ON NON-AGENDA ITEMS,” the Board has repeatedly informed its audience that trustees are legally barred from discussing, either among themselves or with speakers from the public, issues the latter raised under this item. (See meeting audio for 9/24/09, item 9.01; 11/12/09, item 9.01, 12/10/09, item 9.01, 2 comments; 2/25/10, item 8.01; 4/7/10, item 3.01; 4/14/10, item 3.01; 4/22/10, item 8.01; and 2/23/10, item 3.01 “Public Comment Period” for examples of these statements). These pronouncements are made verbally, separately and in addition to the public speaking guideline that appears on Board agendas: “The public should be aware that the Board is unable, by law, to deliberate or take action on items raised during the Public Comment Period.”

When the public comment and response provision of NRS 241.020(2)(c)(3) was enacted in 1991, the legislature was responding in part to a request from the Clark County School District. The legislative history indicates that the District’s then attorney, Donald Haight, testified before the Assembly Committee on Government Affairs, saying, “[W]hat we are asking for is the ability to allow the public to come forward, express their concerns, and get feedback from the board without taking any official action.”

The attorney general’s office, while not mandating discussion of public comments, has interpret-

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ed the provisions of NRS 241.020(2)(c)(3) to allow members of public bodies to discuss non-agenda topics when those topics are raised during a general public comment period:

Although the Open Meeting Law requires the Committee to include a period for public comment and discussion of those comments, we do not believe that the Committee violates the Open Meeting Law if it determines that discussion is not warranted. The Committee is allowed to discuss those comments, even if it is on a topic not on the agenda, but is only required to include a period of time in which a discussion of those comments might occur. (Emphasis added.) OMLO-2003-13, 6, (March 22, 2003).

In another case where a board misleadingly asserted it was legally unable to respond, the attorney general's office in OMLO 2005-02 found that while that public body's "misrepresentation of the law did not amount to a per se violation of the Open Meeting Law, this position of the Board may create a chilling effect on public comment resulting in a violation of the Open Meeting Law." The opinion also advised "the Board [to] change its policy of stating that the law prohibits the Board from commenting on statements made by the general public." The opinion further suggested that, "at the conclusion of the public comment period or after each individual public member's comments, the Chairperson ask the Board members whether they would like to address the comments made by the public." The AG's office also held to this reasoning in AG File 07-004.

In light of Nevada law, prior AG opinions and the relevant legislative history, the Nevada Policy Research Institute finds the repeated public misrepresentations of law by members of the Clark County Board of School Trustees a matter of serious concern. The false assertion of supposed legal constraints upon trustees' ability to discuss important community issues with citizens at school board meetings is not only a clear violation of the spirit of Nevada's Open Meeting Law. It also constitutes yet another example of public dishonesty being regularly practiced by a public board — motivated in this case, apparently, by board members' mere desire to not take personal responsibility for ducking questions from parents and taxpayers. As such, the regularity of the false assertion would appear to constitute a per se violation of the Open Meeting Law.

Therefore, NPRI requests answers to the following questions:

- Do the Clark County School District Board of School Trustees agendas for the 2/23/10, 2/25/10, 3/3/10, 3/11/10, 3/25/10, 3/26/10, 4/7/10, 4/8/10, 4/14/10, 4/22/10, 5/5/10, 5/13/10 and 5/19/10 board meetings comply with NRS 241.020(2)(c)(3) by each including an agenda item allowing for board discussion of general public comments (non-agenda item topics)?
- Do the Clark County School District Board of School Trustees agendas for the 2/25/10, 3/3/10, 3/11/10, 3/25/10, 3/26/10, 4/7/10, 4/8/10, 4/14/10, 4/22/10, 5/5/10, 5/13/10 and 5/19/10 board meetings include clear and concise language informing the public that board discussion of general public comment may be held under the standing agenda

items PUBLIC HEARINGS ON NON-AGENDA ITEMS and PUBLIC COMMENT PERIOD on 2/23/10?

- Did the Clark County School District Board of School Trustees violate the Open Meeting Law (technically or in spirit) on 2/23/10 and 2/25/10, 4/7/10, 4/14/10, 4/22/10 when the board informed public speakers under the agenda items PUBLIC COMMENT PERIOD and PUBLIC HEARINGS ON NON-AGENDA ITEMS that the Board could not discuss or respond to public comments?
- Do the Clark County School District Board of School Trustees sub-committee agendas for the 3/4/10, 5/21/10 Audit Committee; 3/18/10, 4/22/10, 5/20/10 Bond Oversight Committee; and 3/9/10 AZAC (Attendance Zone Advisory Commission) sub-committee meetings comply with NRS 241.020(2)(c)(3) by each including an agenda item allowing for board discussion of general public comments?
- Do the Clark County School District Board of School Trustees sub-committee agendas for the 3/4/10, 5/21/10 Audit Committee; 3/18/10, 4/22/10, 5/20/10 Bond Oversight Committee; and 3/9/10 AZAC sub-committee meetings include clear and concise language as to inform the public that board discussion of general public comment may be held under the standing agenda item PUBLIC COMMENT PERIOD?

If the Attorney General identifies open-meeting-law violations in these or other instances, we also seek directives to the Clark County School District Board of School Trustees that each meeting agenda, in clear and concise language, must include a time period to hear and discuss, if individual trustees choose, topics raised during general public comment.

Thank you for your time and effort regarding this complaint. Should you have any questions or concerns, please feel free to contact me.

Sincerely,



Steven B. Miller
Vice President, Policy