



COPY

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July 2, 2007

Ms. Ann Bednarski
200 West John Street
Carson City, NV 89703

John McKenna, President
Carson City School Board
1402 West King Street
Carson City, NV 89703

Re: Open Meeting Law Complaint / Carson City School Board
AG File No. 07-005

Dear Ms. Bednarski and Mr. McKenna:

On January 10, 2007, this office received a complaint from Ms. Ann Bednarski. Ms. Bednarski alleged in her complaint that Agenda Item No. 6 on the agenda for the January 9, 2007 meeting of the Carson City School Board (Board), was legally insufficient to impart notice of just what policies and bylaws would be considered. Item #6 stated:

"6. Adoption of policies and bylaws
--action item."

Ms. Bednarski also alleged that this agenda item was vague, too broad, and lacked specificity. Furthermore, Ms. Bednarski stated there were no supplementary materials regarding this item.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law up to 120 days following alleged violations. Since the statutory deadlines for enforcement have expired on this complaint, this letter is issued as a guideline to the public body for development of future agendas. This office reviewed the complaint, agenda, and videotape of the January 9, 2007 meeting in drafting this letter.

Ann Bednarski
John McKenna
July 2, 2007
Page 2

Agenda Item No. 6 came up quickly at the January 7, 2007 meeting. Chairman Jim LeMaire called for discussion of the matter after it was read aloud. Some moments passed before Trustee Joe Enge spoke to ask whether the item was necessary to avoid a sunset provision in the Board's policies or bylaws. Chairman LeMaire then asked counsel for the Board to respond to Trustee Enge's question.

Counsel for the Board began by explaining the item was one usually appearing during the Board's organizational meetings following the election of new members. There were no sunset provisions at issue. He also explained that the item was only a routine adoption or ratification of existing bylaws, policies, and administrative regulations. Counsel stated there was not one policy or bylaw being considered for amendment; thereby explaining why there were no supplementary materials for this item. He then stated that should any trustee wish to reconsider a policy or bylaw, reconsideration would have to be agendaized for a subsequent meeting.

Trustee Enge then asked whether a vote to approve the item could be tabled without disturbing the applicability of the bylaws and policies. Counsel answered in the affirmative, but then stated that the item was more for the benefit of the two new members. Trustee Enge never made a motion to table this item, instead he moved on to discuss the item and whether it was so vague so as to be in violation of the Open Meeting Law (OML).

In response to an additional question from Trustee Enge, counsel stated it was his opinion that the item was not in violation of the OML because no specific bylaw or policy was at issue since it was basically just a housekeeping item. Counsel also defended the item's wording by stating that the public was on notice by its wording that the Board would be discussing bylaws and policies, so the public could have contacted the district office to review the bylaws and policies if more information was needed. He conceded that if a specific bylaw or policy was to be considered then the item should have specifically identified that bylaw or policy by name. Despite his opinion that the item as written was not a violation of the OML, counsel volunteered that the item as it appeared on the agenda could have been more specific and could have been written to read "ratification of existing bylaws and policies." Counsel also acknowledged that the agenda item when presented to him for review did read, "Adoption of **existing** bylaws and policies." He edited the word "existing" out of the item explaining he did so because he felt the word "existing" was too restrictive. Counsel did not explain why the word was restrictive when applied to the subject matter of the item.

Counsel asked Trustee Enge if his question, whether the item was an OML violation, had been answered based on counsel's response. Trustee Enge agreed that his question had been answered. Just before the Board voted on the item, Trustee Enge asked one more question. He asked whether this housekeeping item (Item No. 6) would be described more specifically next year. Counsel answered affirmatively

Ann Bednarski
John McKenna
July 2, 2007
Page 3

because he said if one person had a question (here he gestured toward Trustee Enge), then in order to eliminate the problem next year the matter would be drafted more specifically. There being no further discussion, the Chairman called for a vote on Agenda Item No. 6. The item passed by a vote of 6 to 1. Trustee Enge voted against the item.

It is apparent that the Board and its counsel resolved the issue at the meeting which was presented to this office in the form of a complaint. The resolution agreed to by Trustee Enge and counsel for the Board was appropriate and it showed the public an exemplary degree of openness regarding Board business and a commendable cooperativeness between counsel and Trustee Enge which arrived at a solution to the problem.

This office just wants to emphasize that the OML demands agenda items be a "clear and complete" statement of the topics to be discussed during the meeting so that citizens are not deprived of their right to take part in government, nor is the press's ability to report actions of government interfered with. *Sandoval v. Board of Regents*, 119 Nev. 148, 154 (2003).

This office found a violation in a similar circumstance created by a public body's agenda item entitled "Discussion/Approval of Amendments to Board Meeting Rules 8.2 and 8.3." This office found it to be in violation of the OML because the agenda item did not describe what Rules 8.2 and 8.3 related to or the nature of the rules. See, OMLO 99-03. The opinion also went on to disapprove use of generic terms in agendas such as: "President's Report," "Staff Reports," "Old Business," and "New Business." The opinion warned the public body that use of such terms in its agenda risked an action by this office to void any action taken by the public body. NRS 241.036. See also, NEVADA OPEN MEETING LAW MANUAL, § 7.01 and 7.02 (10th ed. 2005).

Applying the foregoing rules for use and preparation of agenda items, the Board's use of "Adoption of policies and bylaws" is far too generic and not reasonably calculated to inform the public of which policies and bylaws are to be considered. Even if they are all being ratified en masse and even if they are existing bylaws and policies, the item should have been more specific and at least identified them by their name or title. Policies should also have been identified by title.

It is no defense to the complainant's assertion that the item was too vague and thus an OML violation, that no member of the public expressed any interest in reviewing any of the Board's policies and bylaws, or requested copies either at the meeting or before the meeting. The fact no member of the public complained before the meeting (with the exception of Trustee Enge) does not mean the item was sufficient under the OML. Public bodies may not put the onus on the public to inquire about agenda items in order to obtain more information. Placing the onus on the public is not a defense

Ann Bednarski
John McKenna
July 2, 2007
Page 4

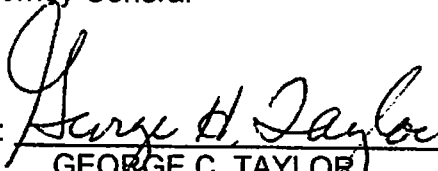
because the OML is there to protect the public's right to participate, but if the public doesn't take advantage of the opportunity, the public body is not allowed to relax its duty under the OML to describe "clearly and completely" the topics to be discussed during its meeting.

Because counsel for the Carson School Board and Trustee Enge acknowledged that the agenda item raised a fair question as to its meaning because it was incomplete and generic, and because counsel committed to greater specificity when the Board considers this matter again, this office issues this letter only as a guideline to assist the Board and staff when drafting agendas. This office seeks to encourage public bodies to meet both the letter and spirit of the OML. NRS 241.015. Agenda items should be created using a standard of reasonableness so that the public receives fair notice of the topics to be discussed. Topics should be clearly and completely described in sufficient detail to give the public fair notice of the public body's business.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



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GCT/cb

cc: Mike Pavlakis, Esq.