



OFFICE OF THE ARIZONA ATTORNEY GENERAL
SOLICITOR GENERAL'S OFFICE
OPEN MEETING LAW ENFORCEMENT TEAM

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VIA EMAIL and U.S. MAIL

Litchfield Elementary School District
c/o Carrie O'Brien
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Re: Disposition of Open Meeting Law
Investigation No. OML2022-0056

Dear Ms. O'Brien:

As you know, the Office of the Attorney General has been investigating complaints alleging Open Meeting Law ("OML") violations by the Litchfield Elementary School District Governing Board (the "Board"). Thank you for your patience as we have worked to identify the OML investigations that have remained pending from the previous administration and resolve them as efficiently as possible.

The Office has concluded its review of the allegations pertaining to the events discussed below, which were the subject of the inquiry letter this Office sent to the Board on November 17, 2022. We find that that Board members Kimberly Moran, Melissa Zuidema, and Danielle Clymer did not violate the OML at the March 15, 2022 Board meeting when they adjourned the meeting early. We further find that Board member Jeremy Hoenack violated the OML at the August 30, 2022 Board meeting by discussing matters that were not noticed on the agenda.

Analysis

I. March 15, 2022 Meeting

Toward the end of the March 15, 2022 Regular Board Meeting, the agenda provided "Reports from Governing Board members." The description for this item stated: "Governing Board members will share information on recent events attended. Governing Board members may

present a brief summary of current events pursuant to A.R.S. §38-431.02(K). Governing Board members will not discuss or take action on any current event summary.” A complaint received by this Office alleged that “[then-Board President] Moran violated A.R.S. 431.02(K) by interrupting and attempting to discuss and deliberate what Board Member Hoenack was reporting when he was giving his Board member report.” Another complaint alleged that Board members Moran, Zuidema, and Clymer improperly cut off Mr. Hoenack’s remarks and adjourned the meeting early in violation of the OML.

During Mr. Hoenack’s time to deliver his current events summary, he began by explaining that he had seen “a movie last night that was called ‘Whose children are they?’” He then spoke for more than four minutes expressing his opinions on Communism and its plot to “infect the schools,” the conflict between Russia and Ukraine, the Russian Revolution and the fall of the Soviet Union, the formation of the Department of Education and its purpose “to undermine the morals of children and to destroy the family,” “the global warming myth” and its effect of destroying the U.S. economy, the reasons why equity policies are “just plain Communism,” and American energy policy. Board President Moran interjected four and a half minutes into Mr. Hoenack’s comments, stating “Board Member Hoenack, I’m having a hard time understanding how this relates to our elementary school board.” Mr. Hoenack responded by shouting: “You know what, you know what, shut your mouth! I am talking about our schools, and you don’t have the right to beat on me! You don’t have the right to beat on me!” As this exchange continued, Ms. Moran asked Mr. Hoenack twice more to “please relate [his comments] to the Litchfield Elementary School District.” Mr. Hoenack interrupted Ms. Moran, yelling “keep your mouth shut and I’m gonna finish!” He also shouted at her: “You have no right to tell me when I’m on the agenda or not! I have the floor! I decide that! Afterwards, you can make an OML complaint! You cannot stop me!” Further, in comments directed to the audience, Mr. Hoenack referred to Ms. Moran as a “clown” and insinuated to that she is a Communist. While Mr. Hoenack continued to speak, Ms. Zuidema made a motion to adjourn the meeting. Over Mr. Hoenack’s shouting, Ms. Moran called for a vote and the motion carried with Ms. Moran, Ms. Clymer, and Ms. Zuidema voting in favor. Mr. Hoenack responded by shouting, “Shut the hell up!”

Section 38-431.02(H) requires that public bodies provide meeting agendas that “list the specific matters to be discussed, considered or decided at the meeting.” However, subsection (K) allows members of a public body to “present a brief summary of current events without listing in the agenda the specific matters to be summarized,” so long as the summary is “listed on the agenda” and the “public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.”

First, contrary to the allegation raised, it is clear that Ms. Moran did not attempt to “discuss or deliberate” on the topics that Mr. Hoenack discussed. A.R.S. § 38-431.02(K). Instead, she only attempted to redirect Mr. Hoenack’s comments to the noticed agenda item—“a brief summary of current events.” The plain language of subsection (K) indicates that the current events summary is intended to be a limited exception to the specific notice requirement of subsection (H). A “brief

summary” connotes a short statement providing a limited amount of information.¹ And a “current event” is commonly understood in this context to mean something notable and relevant to the District that happens within a close timeframe to the present.² In contrast here, Mr. Hoenack’s comments focused on his personal opinions regarding several areas of policy, none of which related to any current events relevant to the District. Because Mr. Hoenack’s comments exceeded the scope of the noticed agenda item, Ms. Moran acted appropriately with respect to the OML to limit Mr. Hoenack’s remarks in order to avoid a violation of the law. *See also* Litchfield ESD Policy BED (stating the Board President is “responsible for the orderly conduct of the meeting” and may rule on “the appropriateness of the subject being presented”).

Second, the OML does not prescribe when it is appropriate for a board to adjourn a public meeting. Accordingly, the actions that Board members Moran, Zuidema, and Clymer took to adjourn the meeting early did not even implicate, much less violate, the OML.

II. August 30, 2022 Meeting

The agenda for the August 30, 2022 Special Board Meeting included an item titled: “Discussion regarding content of correspondence from Attorney General dated August 22, 2022, regarding open meeting law violation.” During the time allotted for this item, the District’s attorney reported the contents of this Office’s August 22, 2022 disposition letter in OML2022-0024. In that letter, this Office found that Ms. Moran had violated the OML by addressing a speaker during the call to the public, rather than waiting until the end of the open call. After the Board’s attorney finished presenting the contents of the letter, Ms. Moran publicly apologized for her error and stated she would remember to follow the proper procedures under the OML going forward. After Ms. Moran finished her comments, she called the next agenda item.

Mr. Hoenack interrupted, declaring “point of order,” and stated: “Kimberly Moran is a disgrace to Litchfield School District and to children in this District who deserve a decent education, as a serial Open Meeting Law violator.” He went on to say that Ms. Moran had “consistently pushed critical race theory in the district against the wishes of the public and has consistently voted against goals to improve academics.” He also criticized Ms. Moran’s response to a recent presentation to the Board regarding proposals to “improve academics” and discussed an upcoming budget override election and a recent teacher training in which he says teachers were “forced to watch a video to learn how implicitly biased they were.” Mr. Hoenack ended his comments by calling for Ms. Moran to resign from the Board.

¹ *See Brief*, Britannica Dictionary, <https://www.britannica.com/dictionary/brief> (last visited May 15, 2024) (“lasting only a short period of time” or “using only a few words”); *Summary*, Britannica Dictionary, <https://www.britannica.com/dictionary/summary> (last visited May 15, 2024) (“a brief statement that gives the most important information about something”).

² *See Current*, Britannica Dictionary, <https://www.britannica.com/dictionary/current> (last visited May 15, 2024) (“happening or existing now : belonging to or existing in the present time”); *Event*, Britannica Dictionary, <https://www.britannica.com/dictionary/event> (last visited May 15, 2024) (“something (especially something important or notable) that happens”).

The OML provides that agendas for public meetings must “list the specific matters to be discussed, considered or decided at the meeting,” and “[t]he public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.” A.R.S. § 38-431.02(H). Under this provision, “other matters” may only be discussed if they are reasonably connected to the specific agenda item itself, not merely to a general topic that the agenda item touches on. *See id; Sandoval v. Bd. of Regents of Univ.*, 67 P.3d 902, 905 (Nev. 2003) (holding public bodies must strictly adhere to the topics posted on the agenda, otherwise “the discussion at a public meeting could easily exceed the scope of a stated agenda topic, thereby circumventing the notice requirement”); *see also* A.R.S. § 38-431.09(A) (“[A]ny person or entity charged with the interpretations of [the OML] shall construe this article in favor of open and public meetings.”).

The specific matter discussed under this agenda item was the OML violation found in this Office’s August 22, 2022 letter. Although Mr. Hoenack referenced this violation as one of the several reasons that he disapproved of Ms. Moran’s performance on the Board, his additional comments related to Ms. Moran’s positions and prior votes on equity and academics, as well as his comments regarding the upcoming budget override election and the District’s teacher development course, were outside the scope of the specifically noticed agenda item. Accordingly, we find Mr. Hoenack violated the OML.

Conclusion

The violation found here occurred more than a year-and-a-half ago and Mr. Hoenack is no longer a member of the Board. Accordingly, the only remedies this Office requires are: 1) the Board must share a summary of the contents of this letter at its next regular meeting; and 2) the District must post this letter prominently on its website for six months from the date of this letter (until November 14, 2024). The Board must provide evidence of compliance with the foregoing requirements no later than November 29, 2024.

This letter relates solely to the disposition of the aforementioned Open Meeting Law matters, and does not relate to any non-OML matters. The facts recited in this letter are not administrative findings of fact and are not made for purposes other than those set forth in A.R.S. §§ 38-431 *et seq.* This is not a formal opinion of the Attorney General’s Office and should not be cited as authority in other matters.

Sincerely,



Shannon Hawley Mataele
Assistant Attorney General