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June 18, 2014

Lynne Adams
2929 North Central Avenue
21st Floor
Phoenix, Arizona 85012

Re: *Open Meeting Law Complaint against Gilbert Public Schools Board*

Dear Ms. Adams:

As you know, this Office received and investigated complaints alleging that members of the Governing Board of Gilbert Public Schools (the “Board”) violated the Arizona Open Meeting Law (“OML”) (A.R.S. §§ 38-431 *et. seq.*). In the course of my investigation, I reviewed the information provided by the complainants and by the Board, including video recordings of the relevant Board meetings. I concluded my review and my findings are outlined in this letter.

The complaint alleged that the Board violated the Open Meeting Law by engaging in discussions about official business outside of a properly noticed public meeting. Specifically, the complaint alleged that Ms. Staci Burk, the President of the Board, contacted various members of the Council to set up a meeting on March 11, 2014 and that “she has already heard from the ‘majority of the Board that these are actionable items’” as demonstrated by an exchange of text messages between Ms. Burk and Ms. Lily Tram, another member of the Board regarding the scheduling of the meeting.

Under the OML, “all discussions, deliberations, considerations, or consultations among a majority of a public body regarding matters that may foreseeably require a final action or a final decision by the governing body, constitute ‘legal action’ and, therefore, must be conducted in a public meeting or executive session.” Ariz. Att’y Gen. Op. 75-8. The OML requires that all meetings of a public body be held openly where members of the public can attend and listen to the deliberations. All deliberations and legal actions regarding Board business must take place in a public meeting. A.R.S. § 38-431.01(A). Meetings of public bodies must also comply with the notice and agenda requirements set forth in A.R.S. § 38-431.02.

A “[m]eeting” occurs when there is “the gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any

deliberations by a quorum with respect to such action.” A.R.S. § 38-431(4). However, a member of the Board may contact a quorum of the Board to propose that a matter be placed on the agenda for Board consideration.

A board member may e-mail staff and a quorum of the board proposing that a matter be placed on a future agenda. Proposing that the board have the opportunity to consider a subject at a future public meeting, *without more*, does not propose legal action and therefore, would not violate the OML.” Ariz. Att’y Gen. Op. I05-004 at 9 (emphasis added).

In this case, the text messages between Ms. Burk and Ms. Tram only address a proposal to place certain matters on an agenda for an upcoming meeting. Ms. Tram indicated that she preferred certain items be removed from the agenda, and Ms. Burk responded that no other Board member had a problem placing all of the items on the agenda for action. Neither party discussed the substance of the agenda items. Ms. Burk also expressly stated that she did not discuss the substance of the matter with other members. Thus, the text messages provided by the complainant do not demonstrate a violation of the OML.

The complainants provided several other email conversations and alleged that the Board violated the OML in the same fashion by transacting business outside of a public meeting. None of the emails established that a quorum of Board members communicated outside of public meetings regarding official business. Many of the email conversations provided by complainants occurred between one Board member and members of the community or the school employees. For example, Board member Daryl Colvin forwarded an email from a school employee, apparently to her supervisors, because he felt that the email was inappropriate in her criticism of him and Ms. Julie Smith. Mr. Colvin requested that the recipients report back to him and Ms. Smith, as well as the Board President, regarding the resolution of the matter. Nothing in this exchange demonstrates that a quorum of the Board communicated and took action outside of a public meeting. The complainants also provided emails between Board members, but the total members involved never exceeded a minority of the Board. In addition, no evidence demonstrated a link between these individual members to create a serial communication in violation of the OML. Thus, these communications do not establish a violation of the OML.

Nonetheless, in light of the significant public interest in the business before the Board and the concerns of secret decision-making raised by the public, I recommend that the Board minimize the amount of email and telephonic communications regarding official business among themselves outside of a public meeting. This Office received earlier complaints, which were also found to be unsubstantiated, arising from similar circumstances. The superintendent, members of her staff, or the Board’s attorney could have effectively assisted with many of the matters discussed in the emails I reviewed and avoided any appearance of possible improper communications among Board members.

In addition, a complainant alleged that the Board discussed an employee in public session without providing notice that the discussion would occur. Under the OML, the Board must only provide prior notice to the employee if it intends to discuss such employee in executive session. A.R.S. § 38-431.03(A)(1). Although employment laws or other regulations may also require notice, the OML does not require prior notice of a public discussion of an employee other than on the meeting agenda. In addition, I reviewed the video of the meeting in question and observed that the Board did not engage in a substantive discussion of the employee that would require an item to appear on the agenda. The issue arose as a tangent in another discussion involving general employment issues for the district. Thus, this allegation does not substantiate a violation of the OML.

Accordingly, I am closing these complaints. I recently received further allegations involving the potential action of a quorum of the Board to generate a list of employees for adverse action. The investigation of these allegations is underway. I already sent you copies of the complaints and accompanying materials by email. Please contact me and let me know who will respond to the allegations on behalf of the Board. In addition, please note that the OML allows private parties to commence a suit to enforce the statute. A.R.S. § 38-431.07(A). The complainants may exercise this option themselves or retain private counsel to so. I appreciate your prompt assistance with this matter. Please contact me if you have any questions.

Sincerely,



Christopher A. Munns
Assistant Attorney General

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