

FILED

2014 SEP -2 AM 8: 17

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

BY M. Elwood
DEPUTY

1 1425
2 CATHERINE CORTEZ MASTO
3 Attorney General
4 GEORGE H. TAYLOR
5 Senior Deputy Attorney General
6 Nevada State Bar No. 3615
7 100 North Carson Street
8 Carson City, Nevada 89701
9 Tele: (775) 684-1230
10 Fax: (775) 684-1103
11 Email: gtaylor@ag.nv.gov
12 *Attorneys for Plaintiff*

8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE

10 CATHERINE CORTEZ MASTO, Attorney
11 General of the State of Nevada,

12 Plaintiff,

13 vs.

14 WASHOE COUNTY SCHOOL DISTRICT;
15 and its TRUSTEES: President Barbara
16 Clark, Barbara McLaury, Howard
17 Rosenberg, John Mayer, Dave Aiazzi, and
18 Lisa Ruggerio, in their individual and
19 representative capacities as District
20 Trustees.

21 Defendants.

CASE NO. CV14 01874

DEPT. NO. 15

COMPLAINT: NRS 241.037

(All relief available by Law including
criminal penalties, monetary fines, as
deemed proper by this Court)

19 COMES NOW the Plaintiff, Catherine Cortez Masto, Attorney General of the State of
20 Nevada, by and through George H. Taylor, Senior Deputy Attorney General, and hereby
21 complains as follows:

22 I.

23 **JURISDICTION AND PARTIES**

24 1. Plaintiff herein is the duly elected Attorney General of the State of Nevada with
25 her principal office located in Carson City, Nevada.

26 2. The Attorney General has statutory authority to investigate and prosecute
27 violations of Nevada's Open Meeting Law (OML). NRS 241.037(1). The Attorney General has
28 statutory authority to seek avoidance of actions taken by public bodies and/or seek injunctive

1 relief against a public body or person, and to require compliance with or prevent violations of
2 the provisions of the OML. NRS 241.037(1).

3 3. This Court has jurisdiction of this civil action pursuant to NRS 241.037(1).

4 4. Injunctive relief may be issued without proof of actual damage or proof of
5 irreparable harm sustained by any person. NRS 241.037(1)(a).

6 5. The Attorney General has authority to investigate and prosecute any violation of
7 Chapter 241 of the Nevada Revised Statutes. NRS 241.039.

8 6 At all times relevant to this Complaint, Defendant Washoe County School District
9 was a public body within the meaning of NRS 241.015(4).

10 7. At all times relevant to this Complaint, Defendants Barbara Clark, John Mayer,
11 Lisa Ruggerio, Dave Aiazzi, and Howard Rosenberg were Trustees of the Washoe County
12 School District.

13 8. The allegations in this Complaint that Defendants violated various provisions of
14 the OML arose in Washoe County, State of Nevada.

15 9. This Complaint was filed within the applicable limitations period in
16 NRS 241.037(3) for a suit to void an action and/or for injunctive relief.

17 II.

18 **OPEN MEETING LAW**

19 10. A public body "meets" when a quorum of the body is present to deliberate
20 toward a decision or to take action on any matter over which the public body has jurisdiction,
21 supervision, control, or advisory power. NRS 241.015(3)

22 11. All meetings of public bodies must be open and public, and all persons must be
23 permitted to attend any meeting of these public bodies. A meeting that is closed pursuant to a
24 specific statute may only be closed to the extent specified in the statute allowing the meeting
25 to be closed. NRS 241.020(1).

26 ///

27 ///

28 ///

1 The meeting was to continue after lunch, but President Clark called a "legal meeting" (non-
2 meeting) excluding the public and employees except for the District Counsel and
3 Superintendent Pedro Martinez.

4 18. At a break in the morning session at about 11:00 a.m., President Clark
5 accompanied by Randy Drake, District Counsel, asked Superintendent Pedro Martinez if she
6 could see him in his office. In his office she informed Superintendent Martinez that there was
7 an allegation against him that he was not a Certified Public Accountant.

8 19. President Clark called a legal meeting (non-meeting: NRS 241.015(b)(3)(2)).

9 20. Trustees met with Superintendent Martinez in a non-meeting on the afternoon
10 of July 22, 2014. Counsel began the meeting by informing the Trustees and Mr. Martinez, that
11 he had investigated an allegation that the Superintendent was not a C.P.A., by gathering
12 information from sources in Illinois, where the Superintendent previously was employed.

13 21. Trustees and the Superintendent discussed the requirements of being a C.P.A.
14 in Illinois in 1992. President Clark stated she was unaware of the difference in holding a
15 certificate and being a licensed C.P.A. Trustees Aiazzi and Ruggerio both indicated that this
16 allegation was a serious matter.

17 22. Superintendent Martinez left the meeting then returned to the Board Room with
18 a document indicating he held a Certified Public Accountant Certificate from the University of
19 Illinois from 1992. The Superintendent left the Trustee meeting and returned to his office.

20 23. After the Superintendent left, the Trustees decided that they would terminate the
21 Superintendent's contract and ask him to resign. Trustees and Counsel then went to the
22 Superintendent's office to tell him they wanted him to resign. When Superintendent Martinez
23 demanded that the Trustees follow separation clauses in his contract the officers left and
24 returned to the meeting with the other Trustees.

25 24. After the Trustees returned to their private meeting room, they decided to offer
26 the Superintendent a deal in exchange for his voluntary resignation and immediate departure.

27 25. Counsel made at least two visits to the Superintendent's office over a period of
28 an hour and a half to two hours. Superintendent Martinez was told the Trustees were willing

1 to pay money to secure his immediate departure. They made monetary offers for a voluntary
2 resignation, each of which increased the dollar amount. First it was increased to \$100,000
3 and then in a second offer to \$200,000. Superintendent Martinez declined all offers.

4 26. Following Superintendent Martinez' rejection of Trustee's demands for voluntary
5 resignation, Chief of Staff Kristen McNeel and Deputy Superintendent Traci Davis were told by
6 the President Barbara Clark that "You no longer report to Pedro. He's no longer your
7 superintendent."

8 27. Superintendent Martinez was in his office standing next to Randy Drake when
9 Traci Davis came to the office. Superintendent Martinez told her that the Board had fired him.
10 Barbara Clark entered the office at that time and told Ms. Davis that she no longer worked for
11 Superintendent Martinez, that he is not your boss. Ms. Davis then left the office.

12 28. Later Kristen McNeel and Traci Davis were summoned to the Superintendent's
13 office where they were again told by President Clark that they did not report to Superintendent
14 Martinez and also that Superintendent Martinez had been relieved of his duties – immediately.

15 29. President Clark addressed the Superintendent's leadership team that same
16 afternoon at about 4:30 in which she told them Superintendent Martinez no longer worked for
17 the District. This message meant he had been fired.

18 30. President Barbara Clark addressed Superintendent Martinez' Leadership team
19 (Deputy Superintendent, Chief of Staff, etc.) at about 4:30 on the afternoon of July 22, 2014,
20 informing them that the Superintendent had been relieved of duties and that his deputy and
21 Chief of Staff would take over the Superintendent's duties. McNeel and Davis and the
22 Leadership team knew that the Trustee's decision was final and permanent.

23 31. Before Superintendent Martinez left the building he asked Kristen McNeel to go
24 to the District's interim police chief's office to tell him not to come to his office to escort him
25 out. Many employees had heard Superintendent Martinez was to be escorted from his office
26 by the District police. He had been fired.

27 32. President Clark, surrounded by several Trustees, held video press conference
28 on July 22, 2014, in which she announced the Superintendent had been relieved of his duties.

1 She stated that the decision had been made that day. She was asked what the Board would
2 do for a permanent replacement. She stated that the Trustees would meet shortly to decide
3 whether to do an interim replacement and later decide what their next steps would be. She
4 was asked if she had a candidate in mind; she replied that they had not even begun those
5 discussions.

6 33. On July 23, 2014, President Clark released a statement that an item for the
7 Trustees July 29, 2014, public meeting had been requested so that the Board could consider
8 and take possible action regarding Superintendent Martinez' employment contract with the
9 District.

10 34. On July 25, 2014, President Clark released a statement in which she stated that
11 item 3.01 on the Board's July 29th Board meeting had been pulled, but would be rescheduled
12 in August.

13 35. On July 31, 2014, President Clark released a statement, on advice from outside
14 counsel, that the Board understands that last week's actions may be void under Nevada law,
15 and the Trustees have agreed that last week's events are void. Clark went on to say Martinez
16 should return to work immediately. He returned to work on Friday, August 1, 2014.

17 36. Superintendent Martinez did not receive notice that his character, misconduct or
18 professional competence would be discussed by the Trustees in private. The agenda for the
19 meeting on July 22, 2014 did not have an item describing the matters that were discussed by
20 the Trustees nor did any item inform the public that the Trustees would take action several
21 times in private before eventually firing the Superintendent.¹

22 **CLAIMS FOR RELIEF**

23 (All relief available by Law including criminal penalties,
24 monetary fines as deemed proper by this Court)

25 37. Plaintiff incorporates by reference, as though fully set forth herein, all of the
26 allegations of Paragraphs 1 to 36.

27
28 ¹ Investigation interview transcripts for each of the Trustees named herein which support the foregoing
factual assertions are attached hereto as exhibits.

1 definition of "meeting" in NRS 241.015 when they held a personnel session in private to
2 discuss matters unrelated to litigation or potential litigation.

3 **COUNT II**

4 (NRS 241.040(4))

5 44. Trustees final determination to take the matter to a public meeting was action
6 concerning Superintendent's character, alleged misconduct and professional competence.
7 This action under the guise of a "legal meeting" with Superintendent Martinez present violated
8 fundamental notice and agenda provisions of NRS 241.033(1),(2) and NRS 241.031(1).

9 **COUNT III**

10 (NRS 241.040(4))

11 45. Superintendent Martinez was asked to attend the "legal meeting." His presence
12 in a legal meeting is prohibited by statute. NRS 241.015(3)(b)(2). The enactment of authority
13 for a "non-meeting" to receive information from the District's attorney and to deliberate on that
14 information does not allow the public body to consider personnel matters. The presence of
15 the Superintendent and discussion of his legal status as a Certified Public Accountant is a
16 serious and knowing violation of the public trust.

17 **COUNT IV**

18 (NRS 241.040(4))

19 46. At some point during the Trustee's private meeting to discuss anonymous
20 information regarding Superintendent Martinez C.P.A. status, the Trustees decided to
21 terminate the Superintendent's contract with the District. After returning to their Board Room
22 the Trustees, and each of them, decided to go back and negotiate his resignation. Their
23 decision constituted action in violation of NRS 241.020. Trustees took action without notice
24 and agenda. "Action" includes commitments or promises among the members of a public body
25 as well as formal votes.

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT V

(NRS 241.040(4))

47. Counsel Randy Drake carried the first offer in the amount of \$100,000 from the Trustees to Superintendent Martinez in his office. The first offer by the Trustees was made after discussion and deliberation of the least amount that would secure the Superintendent's voluntary resignation. The presentation of the first offer to Superintendent Martinez was action that violated NRS 241.020.

COUNT VI

(NRS 241.040(4))

48. Trustees made one more offer of \$200,000 after two hours of haggling and deliberation. Trustees informed Superintendent Martinez that they wanted him out and were upping the offer to \$200,000 for him to leave. This offer stands separately from the first offer and is the result of further deliberation and discussion by the Trustees. As presented to Superintendent Martinez, it was yet another action that violated NRS 241.020.

COUNT VII

(Injunctive Relief; NRS.241.037)

49. NRS 241.036 states that "The action of any public body taken in violation of any provision of this chapter is void." Furthermore, injunctive relief may be issued without proof of actual damages or other irreparable harm sustained by any person." NRS 241.037(1). The Attorney General seeks injunctive relief from this Court declaring that the actions described in this compliant and as further set out in the Claims for Relief were and are void *ab initio*.

WHEREFORE, THE PLAINTIFF PRAYS FOR RELIEF AS FOLLOWS:

1. That this Court find that the Defendant Washoe County School District is a public body within the meaning of NRS 241.015(4);
2. That this Court find that the seven named Trustees knowingly violated the OML's prohibition against meeting in private to discuss the termination of Superintendent Pedro Martinez.

///

1 3. That this Court find that each named Trustee knowingly participated and took
2 action in private with the goal of terminating Superintendent Martinez contract in violation of
3 the OML.

4 4. That this court fine each Trustee up to \$500.00 per count for deliberate and
5 knowing violations of the OML. NRS 241.040(4).

6 5. That this Court find that Board President Clark, before calling a legal meeting,
7 did not determine whether the discussion of Superintendent Martinez' legal status as a
8 Certified Public Accountant, and subsequent deliberation towards termination of
9 Superintendent Martinez' contract, was authorized by a "legal meeting."
10 NRS 241.015(3)(b)(2).

11 6. That the Court find that the Trustees met in private on July 22, to deliberate
12 and/or make the decision to terminate the employment of WSCD Superintendent of Schools
13 Pedro Martinez.

14 7. That the Court find that six Trustees deliberated in private without benefit of
15 notice or agenda on July 22, 2014.

16 8. That this Court find that the Trustees violated NRS 241.031, when on
17 July 22, 2014 six Trustees, following private deliberations in which the Trustees deliberated on
18 Superintendent Martinez' professional competence, character, and misconduct as related to
19 the Superintendent's status as a Certified Public Accountant, took action - whether by
20 consensus or vote - and made two financial offers to Superintendent Martinez to voluntarily
21 resign.

22 9. That this Court find Trustees' private deliberations, discussions, and actions on
23 July 22, 2014, authorizing a negotiation with Superintendent Martinez to voluntarily resign
24 constituted action in violation of the NRS 241.020 and is void.

25 10. That the Trustees' private meeting on July 22, 2014, violated the OML's
26 prohibition against closure of public meetings in the absence of specific statutory authority.

27 11. That this Court otherwise grant Plaintiff such further and other relief as is just
28 and appropriate under the circumstances.


AFFIRMATION PURSUANT TO NRS 233B.030

The undersigned does hereby affirm that the preceding COMPLAINT UNDER NRS 241.037 filed in the First Judicial District Court of the State of Nevada does not contain the social security number of any person.

DATED this 2nd day of September, 2014.

CATHERINE CORTEZ MASTO
Attorney General

By:


GEORGE H. TAYLOR
Senior Deputy Attorney General
Bureau of Government Affairs
Open Meeting Law
(775) 684-1230

Attorney General's Office
100 N. Carson Street
Carson City, Nevada 89701-4717

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

INDEX OF EXHIBITS

| Exhibit No. | Exhibit Description | Pages |
|--------------------|---|--------------|
| 1 | Transcript – Interview of Barbara Clark, August 5, 2014 | 45 |
| 2 | Transcript – Interview of Pedro Martinez, July 28, 2014 | 48 |
| 3 | Transcript – Interview of Tracy Davis, July 31, 2014 | 29 |
| 4 | Transcript – Interview of Barbara McLaury, August 4, 2014 | 39 |
| 5 | Transcript – Interview of Howard Rosenberg, August 5, 2014 | 35 |
| 6 | Transcript – Interview of John Mayer, August 4, 2014 | 33 |
| 7 | Transcript – Interview of Lisa Ruggerio, August 5, 2014 | 38 |
| 8 | Transcript – Interview of Dave Aiazzi, August 4, 2014 | 24 |
| 9 | Transcript – Interview of Kristin McNeel, August 1, 2014 | 25 |
| 10 | Transcript – Interview of Estela Gutierrez August 27, 2014 | 29 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28