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By Certified Mail, Return Receipt Requested

Yucca Fire District
12349 Frontage Rd.
Yucca, AZ 86438

Re: Open Meeting Law and the Yucca Fire District

Board Members:

As you know, the Office of the Attorney General (the "Office") received a complaint alleging that the Yucca Fire District Governing Board (the "Board") violated Arizona's Open Meeting Law. The Office has concluded its review of the allegations and has determined that there were multiple Open Meeting Law violations as discussed below. The facts recited in this letter serve as a basis for this conclusion, but 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.*

Meeting Documents Allegations

The complaint contained two general allegations concerning the Board's meeting notices, agendas, and minutes. First, the complaint alleged that the Board did not regularly post notices and agendas for its meetings at least 24 hours in advance. Second, the complaint alleged that the Board did not post its meeting minutes on its website within three working days after a meeting.

The Board's June 9, 2020 Response stated that from approximately August 2019 to October 2019, the Board did not post its meeting agendas at least 24 hours prior to the meeting due to the former Fire Chief's arrest and subsequent indictment for embezzlement of Fire District funds. *See* Board's Response at 1. Accordingly, the Board violated the Open Meeting Law.

The Board's Response also stated that the minutes were not posted on its website within 3 working days after the meeting from approximately August 2019 to October 2019. *See id.* at 1. While the Open Meeting Law does not specifically require special districts to post their meeting minutes on their website, *see* A.R.S. § 38-431.02(A)(3), -431.01(D), if the website posting of the Board's meeting minutes is the only way members of the public can access the minutes, then the Board must continue posting its minutes online. Because the Board's Response is unclear as to

whether the only availability for public access meeting minutes is through the Board's website, the Office is unable to substantiate a violation of the Open Meeting Law in connection with this allegation.

Executive Session Allegations

The complaint contained two allegations concerning the Board's executive sessions. First, the complaint alleged that the Board did not provide adequate notice of its executive sessions. Second, the complaint alleged that the Board regularly took legal action during its executive sessions. Specifically, the complaint alleged that the Board made statements that the Board made all final decisions in executive session.

Here, the Office requested executive session materials from December 2019 through April 2020, and received both the Board's Response and supporting documents along with materials subpoenaed from former Board members Terry Underhill and Karon Lamkin. After reviewing this information, the Office is unable to substantiate a violation of the Open Meeting Law with respect to former Board members' statements about the Board taking legal action in executive session and making all final decisions in executive session. However, the Office has determined that the Board violated the Open Meeting Law as follows: (1) as noted above, the Board violated the Open Meeting Law by not posting its agendas at least 24 hours in advance of its meetings between approximately August 2019 to October 2019, so any executive sessions that were scheduled for these meetings were also not properly noticed; and (2) the Board violated the Open Meeting Law in three specific instances regarding the Board's April 24, 2020 executive session as discussed below.

First, the Board did not provide sufficient notice of its April 24, 2020 executive session as the Board's agenda cited to A.R.S. § 38-431.03(A) generally and did not contain the specific numbered paragraph under subsection (A) that authorized the executive session. *See* A.R.S. § 38-431.02(B) ("a notice of the executive session shall state the provision of law authorizing the executive session"); *see also* *Ariz. Agency Handbook* § 7.6.7 (Ariz. Att'y Gen. 2018). Second, the Board improperly entered into the executive session as the Board did not conduct the required public vote to enter into executive session. A.R.S. § 38-431.03(A) (after "a public majority vote of the members constituting a quorum" a public body may enter into executive session). Third, after reviewing the April 24, 2020 executive session recording, the Board went beyond the scope of the agenda item (i.e. "to discuss the assignment of [the] Assistant Fire Chief Position") by engaging in discussion of general operational concerns, finding a take-home vehicle for the employee, and the District's response requirements for different contractual agreements. For these reasons, the Board violated the Open Meeting Law.

The December 10, 2019 Meeting

The complaint contained allegations related to the Board's sale of Fire Station #2. First, the complaint alleged that there was no public notice provided that the Board planned to vote on selling Fire Station #2. Specifically, the complaint alleged that there was no information provided about the sale of Fire Station #2, the sale price, or who the buyer of the property was.

Second, the complaint alleges that there was no public vote taken to sell Fire Station #2.

The Board's Response included copies of the December 10, 2019 minutes along with the official sale documents pertaining to the initial sale of the Fire Station and copies of the paperwork for the subsequent cancellation of the sale. *See* Board's Response at 3. After review of this information, the Office has determined the Board violated the Open Meeting Law in three instances related to this meeting. First, the Board violated the Open Meeting Law by not providing adequate notice that the Board planned to vote to sell Fire Station #2 at this meeting. The December 10, 2019 agenda merely lists this agenda item as "**Discussion** about selling Station #2." *See* Board's December 10, 2019 Agenda (emphasis added). This does not put the public on notice that this matter was under consideration for legal action at the December 10, 2019 meeting and this violated the Open Meeting Law.

Second, the minutes of the December 10, 2019 meeting do not reflect that the Board conducted a public vote to sell Fire Station #2. *See id.* The Open Meeting Law requires that the minutes contain "[a]n accurate description of all legal actions ... taken [at a meeting], including a record of how each member voted. No description of legal action or how each member voted is included in the December 10, 2019 minutes. Accordingly, the Board violated the Open Meeting Law by not including the legal action taken at the December 10, 2019 meeting to sell Fire Station #2 in the meeting minutes.

Finally, the Office notes that the sale of Fire Station #2 was cancelled on or around January 24, 2020 and title of Fire Station #2 was transferred back to the Yucca Fire District. Additionally, the title documents related to the cancellation of Fire Station #2's sale include a copy of a check that two out of three former Board members endorsed for the amount of \$960.00 to pay for closing costs. Notably, the Board held two meetings in January 2020—one occurred on January 7, 2020, and the other on January 10, 2020. After review of the agendas and minutes for the Board's January 7, 2020 and January 10, 2020 meetings, neither meeting's notice, agenda, or minutes includes any mention of the cancellation of the sale of Fire Station #2, the Board's acceptance of taking title back to Fire Station #2, or that the Board would pay any closing costs. Because these documents indicate that a quorum of the Board was involved in this transaction, it appears that the Board held a non-public meeting to make these decisions. Because the Open Meeting Law prohibits secret decision-making, the Board violated the Open Meeting Law. Accordingly, the Board's decisions to (1) accept the cancellation of the sale of Fire Station #2, (2) take title back to Fire Station #2, and (3) pay \$960.00 in closing costs are all null and void absent ratification.

The Board's January 2020 Meetings

The complaint alleged that the Board held at least one meeting in January 2020, but that there were three different January dates posted on meeting documents. Specifically, the complaint alleges that the conflicting dates for the Board's meetings included January 7, 2020, January 10, 2020, and January 23, 2020.

As previously noted, the Board held two meetings in January 2020—one on January 7,

2020, and the other on January 10, 2020. After reviewing the January 7 and January 10 agendas, the Office has determined that the Board violated the Open Meeting Law as both meeting agendas were posted less than 24 hours prior to the meeting. Specifically, the January 7, 2020 meeting was posted approximately 30 minutes prior to the meeting, and the January 10, 2020 meeting was posted with less than 24 hours' notice. The Board therefore violated the Open Meeting Law by failing to comply with A.R.S. § 38-431.02(C). Thus, any legal action taken at the Board's January 7, 2020 and January 10, 2020 meetings are null and void absent ratification.¹

Additionally, it does not appear from the record that any Board meeting occurred on January 23, 2020. Accordingly, the Office is unable to substantiate a violation of the Open Meeting Law in connection with the January 23, 2020 meeting.

The Board's Sale of Fire Truck Parts

The complaint contained allegations concerning the online sale of a fire truck owned by the Yucca Fire District. The complaint alleged that a Yucca Fire District employee advertised and sold parts of a vehicle online, and that the sale of these vehicle parts had never been publicly discussed or voted on by the Board. Specifically, the complaint alleged that the vehicle and its parts were advertised for sale by the Yucca Fire District employee on Facebook and/or Craigslist. The complaint further alleged that there had not been any public disclosure of the sale price of these items.

The Board's response stated that the vehicle in question was owned by the former Fire Chief William Leflet and that the Board members at the time allowed Chief Leflet to put Yucca Fire District decals and lights on the truck while he was Fire Chief. Accordingly, the Office is unable to substantiate a violation of the Open Meeting Law in connection with these allegations.

Remedy

To remedy this violation, the Office considered the readily available records documenting whether the Board has had any recent open meeting violations, the Board's Response, and that the majority of the current Board was not involved in the Open Meeting Law violations contained in this letter.

Having weighed these factors, and in order to resolve this matter, the Office now requires that the Board make available a copy of this letter available to the public by posting this letter on its website for at least one year. The Office has noted this occurrence as a violation, which will be considered in determining the response to any further Open Meeting Law violations by the Board and its current members.

¹ The Office notes that the Board did prepare a resolution and ratification agenda item for purposes of voting to ratify legal action taken at the January 10, 2020 meeting at its February 10, 2020 meeting. However, the Office does not have any documentation that ratification occurred with respect to legal action taken at the January 7, 2020 meeting.

Furthermore, pursuant to A.R.S. § 38-431.05(A), “[a]ll legal action transacted by any public body during a meeting held in violation of any provision of [the Open Meeting Law] is null and void,” unless subsequently ratified pursuant to section 38-431.05(B). Legal action taken at all Board meetings between August 2019 and January 2020 is therefore considered “null and void” in the absence of ratification. Additionally, all legal action taken regarding the cancellation of the sale of Fire District #2 that resulted from a non-public Board meeting is null and void absent ratification.

A.R.S. § 38-431.05(B) provides a process by which “[a] public body may ratify legal action taken in violation” of the Open Meeting Law. Ratification of legal action “shall take place at a public meeting within thirty days after discovery of the violation[.]” A.R.S. § 38-431.05(B)(1). The Board has thirty days from the date of receipt of this letter to ratify any legal action taken by the Board at all Board meetings between August 2019 and January 2020, and all legal action taken regarding the sale cancellation of Fire Station #2. The procedure for ratification is provided in A.R.S. § 38-431.05(B). *See also Arizona Agency Handbook* § 7.12 (Ariz. Att’y Gen. 2018).

If the Board chooses to ratify any of the legal action identified above, please provide verification to the Office within seven days of such ratification. In the absence of statutorily valid ratification, the legal action previously taken by the Board at any and all Board meetings between August 2019 and January 2020, and as related to the cancellation of the sale of Fire District #2 is null and void.

This letter relates solely to the disposition of the aforementioned Open Meeting Law complaint; it is not a formal opinion of the Attorney General’s Office and should not be cited as authority in other matters.

A handwritten signature in black ink, appearing to read "Katherine Jessen". The signature is fluid and cursive, with the first name "Katherine" written in a larger, more prominent script than the last name "Jessen".

Katherine Jessen
Assistant Attorney General
Open Meeting Law Enforcement Team