

1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE

4 In the Matter of:

5 MINERAL COUNTY BOARD OF  
6 COMMISSIONERS

) Attorney General File No. 06-002  
)  
)  
)

7 I.

8 INTRODUCTION

9 In a letter received January 5, 2006, by the Office of the Nevada Attorney General,  
10 Mineral County District Attorney Cheri Emm-Smith filed a complaint with this office alleging a  
11 violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In  
12 particular, District Attorney Emm-Smith alleges that the Mineral County Board of  
13 Commissioners (Board) violated the Open Meeting Law at its December 8, 2005 meeting by  
14 failing to provide notice to the constable of a change to his/her budget.

15 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
16 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
17 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
18 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
19 and audiotape recordings.

20 II.

21 FINDINGS OF FACT

22 The Board held a properly noticed public meeting on December 8, 2005. The fourth  
23 item on the agenda stated, "Gary Schaaf, Director of Public Works & Airport – Discussion and  
24 appropriate action on purchase of pickup [truck] for Parks and Recreation." During the  
25 discussion of the item, the Board began to discuss funding for the entire Parks and  
26 Recreation Department. Chairman Richard Bryant realized that the Board's discussion  
27 exceeded the agenda item and led the discussion back to the purchase of a pickup truck for  
28 the Parks and Recreation

1 Department<sup>1</sup>. The Board decided to continue the item and consider it later in the meeting  
2 after it discussed funding issues for the Parks and Recreation Department, which was a  
3 subsequent properly noticed item on the agenda.

4 During the subsequent discussion of the truck, Commissioner Edward Fowler  
5 recommended that \$15,000.00 previously allocated for the constable's vehicle be re-routed to  
6 purchase the pickup truck for the parks and recreation department. The Board did not  
7 discuss the constable in anyway. District Attorney Emm-Smith stated that she believed  
8 before the Board re-routed the funding from the constable, the Board was obligated to  
9 provide notice to the constable. The Board did not accept that advice and passed a motion to  
10 re-route the funding from the constable's budget to the Parks and Recreation Department.

11 III.

12 ISSUE

13 Did the Open Meeting Law require the Board to provide notice to the constable before  
14 it re-routed funding from the constable's budget to the Parks and Recreation Department?

15 IV.

16 CONCLUSIONS OF LAW

17 The Open Meeting Law requires notice to an individual in two different circumstances.  
18 First, NRS 241.033(1) states:

- 19 1. A public body shall not hold a meeting to *consider the*  
20 *character, alleged misconduct, professional competence, or*  
21 *physical or mental health of any person* or to consider an *appeal*  
22 *by a person of the results of an examination* conducted by or on  
23 behalf of the public body unless it has:  
(a) Given written notice to that person of the time and place of the  
meeting; and  
(b) Received proof of service of the notice. [Emphasis added.]

24 Second, NRS 241.034(1)(a) states:

- 25 1. Except as otherwise provided in subsection 3:

26 \_\_\_\_\_  
27 <sup>1</sup> After listening to the tape recording of the entire meeting, the Board's discussion exceeded different  
28 agenda statements throughout the meeting, which is a violation of the Open Meeting Law. See *Sandoval v. Board of Regents*, 119 Nev. 148 (2003). The Chair repeatedly corrected this problem, but in some instances discussion and/or deliberation went on beyond the agenda topics. However, since this office did not receive a complaint on this issue, this office advises the Board to avoid exceeding its agenda statement in the future.

- 1 (a) A public body shall not consider at a meeting whether to:  
2 (1) *Take administrative action against a person;* or  
3 (2) *Acquire real property owned by a person by the exercise of the*  
4 *power of eminent domain,*  
5 unless the public body has given written notice to that person of  
6 the time and place of the meeting. [Emphasis added.]

7 Section 6.10 of the Nevada Open Meeting Law Manual states, "Administrative action against  
8 a person' does not occur unless the matter being acted on is uniquely personal to the  
9 individual or entity." NEVADA OPEN MEETING LAW MANUAL, § 6.10, at 51 (10<sup>th</sup> ed. 2005).

10 In this instance, the Board did not discuss the "character, alleged misconduct,  
11 professional competence, or physical or mental health" of the constable. In fact, the Board  
12 barely mentioned the constable except to re-route the constable's funding to the parks and  
13 recreation department. Thus, NRS 241.033(1) did not legally obligate the Board to provide  
14 notice to the constable.

15 With regard to the personal notice required by NRS 241.034(1), although the Board's  
16 administrative action negatively impacted the constable's budget, the action was not uniquely  
17 personal to the constable. As a result, NRS 241.034(1) did not legally obligate the Board to  
18 notice the constable about the public meeting.

19 V.

20 **CONCLUSION**

21 The Board complied with the Open Meeting Law, and at this time, this office is closing  
22 its file on this issue.

23 DATED this 21<sup>st</sup> day of June 2006.

24 GEORGE J. CHANOS  
25 Attorney General

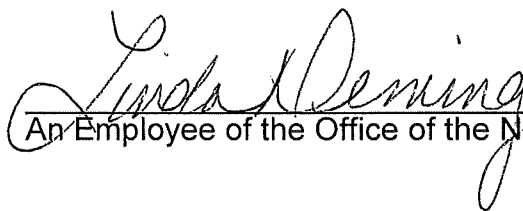
26 By: Neil A. Rombardo  
27 NEIL A. ROMBARDO  
28 Senior Deputy Attorney General  
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100 North Carson Street  
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 22nd day of June 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

CHERI EMM-SMITH  
MINERAL COUNTY DISTRICT ATTORNEY  
PO BOX 1210  
HAWTHORNE NV 89415

HELENE J WEATHERFIELD  
MINERAL COUNTY CLERK AND TREASURER AND  
CLERK TO THE BOARD OF COUNTY COMMISSIONERS  
PO BOX 1450  
HAWTHORNE NV 89415

  
An Employee of the Office of the Nevada Attorney General

Attorney General's Office  
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1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE  
4

5 In the Matter of:

6 WASHOE COUNTY BOARD OF  
EQUALIZATION (PANEL A)

Attorney General File No. 06-005

7 I.

8 INTRODUCTION

9 In a letter received February 14, 2006, by the Office of the Nevada Attorney General,  
10 Robert M. Larkin, Chairman of the Washoe County Commission, filed a complaint with this  
11 Office alleging a violation of the Nevada Open Meeting Law, chapter 241 of the Nevada  
12 Revised Statutes. In particular, Chairman Larkin alleges that the Washoe County Board of  
13 Equalization – Panel A (Panel A) violated the Open Meeting Law by conducting serial  
14 communications to schedule a meeting on February 3, 2006 to discuss specific topics related  
15 to the Incline Village tax issues.

16 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
17 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
18 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
19 investigating this matter, this Office reviewed the complaint and responses from two of the  
20 members.<sup>1</sup>

21 II.

22 FINDINGS OF FACT

23 The Washoe County Commission created two panels of the Washoe County Board of  
24 Equalization to hear tax issues. As a result, the Washoe County Board of Equalization  
25 consisted of Panel A and Panel B. Chairman of Panel A, Steven Sparks, along with the  
26

27 <sup>1</sup> It must be noted that the Washoe County District Attorney's Office refused to represent Panel A  
because it alleges that the members of Panel A acted outside the course and scope of their authority. Therefore,  
the members of Panel A provided their own responses to this alleged violation.

28 It must also be noted that the members of Panel A did not provide the proposed agenda for the  
February 3, 2006 meeting. However, the proposed agenda is not relevant to the alleged misconduct and the  
relevant facts can be ascertained by the information provided.

1 Chairman of Panel B, decided to send the Incline Village cases to Panel B so that Panel A  
2 could hear the more complex appeals from businesses.<sup>2</sup> Gary Schmidt, a member of Panel  
3 A, disapproved of the manner in which the appeals were split between the two panels. He  
4 alleged that "Chairman Larkin and other officials attempted to manipulate, influence or control  
5 the work of the board." RENO GAZETTE-JOURNAL, "New tax board upsets residents"  
6 (January 30, 2006).

7 In response, Mr. Schmidt attempted to arrange a meeting by contacting Panel A  
8 members Krolick and Koziol and possibly other panel members. Although not  
9 uncontroverted, the documents and information provided in this investigation would tend to  
10 indicate that Mr. Schmidt may have discussed his substantive concerns over the splitting of  
11 the cases during these communications. Further, the Reno Gazette-Journal reported that,  
12 "[w]ith the support of two other members, he said he has scheduled a special board meeting  
13 at 1 p.m. Friday in the county complex cafeteria to reschedule the cases." *Id.*

14 III.

15 ISSUE

16 Did Panel A violate the Open Meeting Law by conducting serial communications to  
17 schedule a special meeting on February 3, 2006?

18 IV.

19 CONCLUSIONS OF LAW

20 NRS 241.015(2) states:

21 2. "Meeting":

22 (a) Except as otherwise provided in paragraph (b), means:

23 (2) Any series of gatherings of members of a public body at  
24 which:

24 (I) Less than a quorum is present at any individual gathering;

25 (II) The members of the public body attending one or more of the  
26 gatherings collectively constitute a quorum; and

27 (III) The series of gatherings was held with the specific intent to  
28 avoid the provisions of this chapter.

///

<sup>2</sup> Chairman Larkin attended this meeting, but he played no role in the splitting of the appeals between the two panels. This meeting does not invoke the Open Meeting Law because it is not considered a public body. These three chairmen were all from separate public bodies.

1 In *Dewey v. Redevelopment agency of the City of Reno*, 119 Nev. 87, 94-95, 64 P.3d 1070,  
2 1075 (2003), the Nevada Supreme Court stated, “[w]e have . . . acknowledged that the Open  
3 Meeting Law is not intended to prohibit every private discussion of a public issue. Instead,  
4 the Open Meeting Law only prohibits collective deliberations or actions where a quorum is  
5 present.” [Emphasis added.] NRS 241.015(4) states, “‘Quorum’ means a simple majority of  
6 the constituent membership of a public body or another proportion established by law.”

7 Here, Panel A is made up of 5 members. A quorum is 3 members. Mr. Schmidt, a  
8 member of Panel A, attempted to schedule a meeting because he apparently objected to the  
9 actions of the County Commission creating a new Panel B, which would hear some, if not all,  
10 of the Incline Village tax issues.<sup>3</sup> Mr. Schmidt then contacted two other members of Panel A  
11 with his concerns and attempted to schedule a meeting with their approval. The facts are  
12 unclear as to the substance of the conversations between the panel members and/or whether  
13 a quorum was actually present or constructively present during any one conversation. The  
14 facts as presented, read in conjunction with NRS 241.015(2)(a)(2)(III) which requires a  
15 specific intent to avoid the Open Meeting Law, do not support the conclusion that an Open  
16 Meeting Law violation occurred.

17 If serial communications occurred to schedule the meeting, the meeting never took  
18 place, which means the serial communications were to no avail. Also, as previously stated,  
19 substantive evidence does not exist to prove specific intent to avoid the Open Meeting Law  
20 through serial communications. Panel A has never received an Open Meeting Law complaint  
21 against it and has never been accused of an Open Meeting Law violation for serial  
22 communications. Thus, under those circumstances without more information, this Office  
23 would not normally proceed with litigation.

24 This Office advises the members of Panel A that the best way to avoid serial  
25 communications, or the appearance of serial communications, is to refrain from private  
26

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27 <sup>3</sup> The Washoe County Board of Equalization has established procedural rules for scheduling meetings.  
28 This is a local governance issue and not an issue for this opinion. Except to say that the Administrative Chairman  
of a public body can contact members of the public body to determine an appropriate date to schedule a meeting,  
and presuming that such contacts do not involve substantive discussions of an item over which the public body  
has jurisdiction and involve an actual or constructive quorum, the Open Meeting Law is not violated.

1 discussions with other members of the panel as much as possible. For example, when  
2 attempting to schedule a meeting, the members of Panel A should contact Panel A's  
3 assigned support staff requesting a meeting and allow that person to arrange the meeting.  
4 Although this Office finds no violation at this time, this Office warns that the types of  
5 communications alleged herein invite potential abuse of the Open Meeting Law and should be  
6 avoided in the future.

7 V.


8 **CONCLUSION**

9 Panel A of the Washoe County Board of Equalization did not violate the Open Meeting  
10 Law, and at this time, the Office of the Nevada Attorney General is closing its file on this  
11 issue.

12 DATED this 27<sup>th</sup> day of April, 2006.

13 GEORGE J. CHANOS  
14 Attorney General

15  
16 By:

  
17 NEIL A. ROMBARDO  
18 Senior Deputy Attorney General  
19 Nevada State Bar No. 6800  
20 100 North Carson Street  
21 Carson City, Nevada 89701-4717  
22 (775) 684-1205  
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1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 4<sup>th</sup> day of May, 2006, I mailed a copy of the Findings of  
4 Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

5  
6 ROBERT M LARKIN CHAIRMAN  
7 WASHOE COUNTY COMMISSION  
8 1001 E 9<sup>TH</sup> STREET  
9 PO BOX 11130  
10 RENO NV 89520-0027

11 GARY SCHMIDT  
12 9000 MT ROSE HIGHWAY  
13 RENO NV 89511

14 JOHN KROLICK  
15 PO BOX 9274  
16 INCLINE VILLAGE NV 89452

17 THOMAS KOZIOL  
18 2010 MAYER WAY  
19 SPARKS NV 89431

20 MELANIE FOSTER  
21 ASSISTANT DISTRICT ATTORNEY  
22 WASHOE COUNTY DISTRICT ATTORNEY  
23 75 COURT STREET  
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26  
27 Carole Brackley  
28 An Employee of the Office of the Attorney General

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**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

In the Matter of:  
  
MEMBERSHIP COMMITTEE OF THE  
SOUTHERN NEVADA WORKFORCE  
INVESTMENT BOARD

Attorney General File No. 06-006

**I.**

**INTRODUCTION**

In a letter received February 15, 2006, by the Office of the Nevada Attorney General, Reverend Chester Richardson filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Rev. Richardson alleges that the Membership Committee (Committee) of the Southern Nevada Workforce Investment Board (Board) violated the Open Meeting Law at its February 3, 2006 meeting by failing to place all the names of potential nominees to the Board on the agenda.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audio tape recordings.

**II.**

**FINDINGS OF FACT**

On February 3, 2006, the Committee conducted a public meeting pursuant to NRS chapter 241. Agenda item #5 stated, "Discussion and possible action regarding the nomination of new members to the Southern Nevada Workforce Investment Board to be forwarded to the Local Elected Officials and direct staff accordingly." Prior to the meeting, the members of the Committee received the applications of three potential nominees for the Board. At the meeting, the members of the Committee received the applications of three

1 additional potential nominees. Rev. Richardson expressed his concern that he did not  
2 receive the proper time to review the applications of the three additional nominees because  
3 he just received their information at the meeting. He also expressed his concern that their  
4 names were not on the agenda. As a result, he abstained from the vote, but the Committee  
5 passed an action to forward the new nominees to the local elected officials for appointment.

6 **III.**  
7 **ISSUE**

8 Did the Committee violate the Open Meeting Law by failing to place the names of the  
9 nominees on the agenda?

10 **IV.**  
11 **CONCLUSIONS OF LAW**

12 NRS 241.020, in pertinent part, states:

13 2. Except in an emergency, written notice of all meetings must be  
14 given at least 3 working days before the meeting. The notice must  
include:

- 15 (c) An agenda consisting of:  
16 (1) A clear and complete statement of the topics scheduled to be  
17 (2) A list describing the items on which action may be taken and  
clearly denoting that action may be taken on those items.

18 In *Sandoval v. Board of Regents*, 119 Nev. 148, 155 (2003), the Nevada Supreme Court  
19 stated, "Nevada's Open Meeting Law seeks to give the public clear notice of the topics to be  
20 discussed at public meetings so that the public can attend a meeting when an issue of  
21 interest will be discussed."

22 Here, the agenda stated, "Discussion and possible action regarding the nomination of  
23 new members to the Southern Nevada Workforce Investment Board to be forwarded to the  
24 Local Elected Officials and direct staff accordingly." The agenda item states that "possible  
25 action" may occur, and thus, the item is clearly denoted as an action item as required by  
26 NRS 241.020(2)(c)(2). Further, the agenda item puts the public on notice that the Committee  
27 will discuss and take action on the topic of nominees to the Board. The names of the  
28 nominees are not required to place the public on notice of the topic to be discussed so that

1 the public can attend the meeting. This Office empathizes with Rev. Richardson's concern  
2 about receiving the nominees' applications at the last minute, but the law does not prohibit  
3 last minute nominees. Therefore, the Committee did not violate the Open Meeting Law.


4 V.

5 **CONCLUSION**

6 The Membership Committee of the Southern Nevada Workforce Investment Board did  
7 not violate the Open Meeting Law, and the Office of the Nevada Attorney General is closing  
8 its file on this issue at this time.

9 DATED this 21<sup>st</sup> day of June 2006.

10 GEORGE J. CHANOS  
11 Attorney General

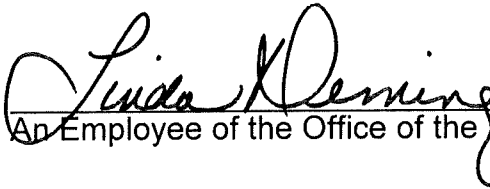
12  
13 By:   
14 NEIL A. ROMBARDO  
15 Senior Deputy Attorney General  
16 Nevada State Bar No. 6800  
17 100 North Carson Street  
18 Carson City, Nevada 89701-4717  
19 (775) 684-1205  
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1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 2nd day of June 2006, I mailed a copy of the Findings of Fact  
4 and Conclusions of Law, by mailing true copies by U.S. Mail to:

5  
6 RICHARD B BLUE JR  
7 EXECUTIVE DIRECTOR  
8 SOUTHERN NEVADA WORKFORCE  
9 INVESTMENT BOARD  
10 1127 SOUTH RANCHO DRIVE  
11 LAS VEGAS NV 89102

12  
13 REV CHESTER M RICHARDSON  
14 1134 COMSTOCK DRIVE  
15 LAS VEGAS NV 89106

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An Employee of the Office of the Attorney General

1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE

4 In the Matter of: )  
5 INDIAN HILLS GENERAL IMPROVEMENT ) Attorney General File No. 06-008  
6 DISTRICT BOARD OF TRUSTEES' )

7 I.

8 INTRODUCTION

9 In a letter received February 16, 2006, by the Office of the Nevada Attorney General,  
10 Mr. Richard Watkins filed a complaint with this office alleging a violation of the Nevada Open  
11 Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Mr. Watkins  
12 alleges that the Indian Hills General Improvement District Board of Trustees' (Board) violated  
13 the Open Meeting Law at its February 13, 2006 meeting by not allowing further public  
14 comment after the close of public comment on item 9 of the agenda.

15 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
16 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
17 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
18 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
19 and audio tape recordings.

20 II.

21 FINDINGS OF FACT

22 On February 13, 2006, the Board conducted a properly noticed open meeting.  
23 Pursuant to agenda item 8, the Board interviewed three candidates for the general manager  
24 position of the district. After conducting the interviews, the Board closed item 8 and opened  
25 deliberations regarding item 9, which stated, "Discussion and possible action on direction  
26 regarding the General Manager position." The Board's agenda also stated, "The public may  
27 comment on any item that is on the agenda at the time it is discussed," and the Board  
28 accepted public comment on item 9 of the agenda. In fact, Mr. Watkins, the complainant,

1 stated his disapproval of the candidates and the Board's deliberations of agenda item 9.  
2 After asking for further public comments on agenda item 9, and hearing none, the chair  
3 closed public comment on agenda item 9. Eventually, the Board, by a vote of 3 to 2, passed  
4 a motion to offer Mr. Dennis Longhofer the general manager position. Mr. Watkins requested  
5 to comment after the motion, and the chair refused stating that public comment was closed  
6 for item 9.

7  
8 **III.**

9 **ISSUE**

10 Did the Board violate the Open Meeting Law by failing to allow Mr. Watkins to make  
11 public comment after the motion to offer Mr. Longhofer the general manager position?

12 **IV.**

13 **CONCLUSIONS OF LAW**

14 NRS 241.020(2)(c)(3) requires a public body to have an agenda consisting of "a period  
15 devoted to comments by the general public, if any, . . ." Section 8.04 of the NEVADA OPEN  
16 MEETING LAW MANUAL states, "Some public bodies choose to hear public comment during  
17 individual agenda items, but that is not a requirement of the Open Meeting Law." NEVADA  
18 OPEN MEETING LAW MANUAL, § 8.04, at 60 (10<sup>th</sup> ed. 2005).

19 It appears from the Board's agenda that it traditionally conducts a general public  
20 comment period and permits public comment on individual agenda items, which complies with  
21 the Open Meeting Law. During the deliberations of item 9 on February 13, 2006, Mr. Watkins  
22 commented on both the potential candidates for the general manager position and the  
23 Board's deliberations in that regard. The chair, hearing no further public comments, closed  
24 the public comment period. The Board then passed a motion to offer the position to  
25 Mr. Longhofer, and Mr. Watkins requested the opportunity to comment again on this agenda  
26 item. The chair refused, stating that the Board closed the public comment period for item 9.  
27 This did not violate the Open Meeting Law because the Board was under no legal obligation  
28 to permit Mr. Watkins to comment again on agenda item 9. Mr. Watkins received his  
opportunity to comment on agenda item 9, and the chair, at the time he closed public

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comment, made it very clear that the public comment on agenda item 9 was closed. Therefore, the Board complied with the Open Meeting Law by providing a reasonable opportunity for members of the public to comment.


V.

CONCLUSION

The Indian Hills General Improvement District Board of Trustees' complied with the Open Meeting Law, and the Office of the Nevada Attorney General is closing its files on this issue at this time.

DATED this 21st day of June 2006.

GEORGE J. CHANOS  
Attorney General

By:   
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
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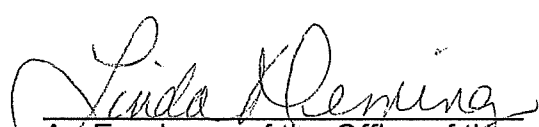


CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 21st day of June 2006 I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

RICHARD WATKINS  
3480 INDIAN DRIVE  
CARSON CITY NV 89705

VICKI REIFER  
EXECUTIVE ASSISTANT  
INDIAN HILLS GENERAL IMPROVEMENT DISTRICT  
3394 JAMES LEE PARK RD #A  
CARSON CITY NV 89705

  
An Employee of the Office of the  
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1 authored by Mr. Arthur Johnson that commented on the character and/or competence of Mr.  
2 Orndorff, Director of the Mineral County Parks and Recreation Department as well as the  
3 Economic Development Coordinator for Public Lands. Upon realizing the nature of this letter,  
4 Chairman Bryant and District Attorney Emm-Smith interrupted Ms. Jones and requested that  
5 she refrain from reading further comments about Mr. Orndorff. Ms. Jones complied with this  
6 request.

7 During the December 29, 2005 meeting, Commissioners Black and Fowler discussed  
8 and deliberated over an item noticed on the agenda during a recess of the meeting.  
9 Chairman Bryant admonished both Commissioners Black and Fowler to cease deliberations  
10 during the recess because they were outside the view of the public. However, the facts  
11 indicate that the two proceeded with their discussion and deliberations even after the  
12 admonishment.<sup>1</sup>

13 III.

14 ISSUES

15 A. Did the Board violate the Open Meeting Law by discussing Mr. Orndorff's  
16 character and/or competence without proper personal notice?

17 B. Did Commissioners Black and Fowler violate the Open meeting Law by  
18 discussing and deliberating about a noticed item in private?

19 IV.

20 CONCLUSIONS OF LAW

21 A. Did the Board violate the Open Meeting Law by discussing Mr. Orndorff's  
22 character and/or competence without proper personal notice?

23 NRS 241.033(1) states:

24 1. A public body shall not hold a meeting to consider the  
25 character, alleged misconduct, professional competence, or  
26 physical or mental health of any person or to consider an appeal by

27 <sup>1</sup> This office realizes that the civil statute of limitations for this issue expired on approximately April 30,  
28 2006, but given the serious nature of the allegations and the possible criminal sanctions that surround such an  
allegation, this office drafts this opinion under the one-year statute of limitations for criminal misdemeanor  
offenses of the Open Meeting Law.

1 a person of the results of an examination conducted by or on  
2 behalf of the public body unless it has:

- 3 (a) Given written notice to that person of the time and place of  
4 the meeting; and  
5 (b) Received proof of service of the notice.

6 In OMLO 2005-10 this Office considered a similar issue. In that opinion, a member of the  
7 North Valleys Citizen Advisory Board commented on the character of the presenter and his  
8 family. A complaint was filed with this Office by the presenter's wife alleging a violation of the  
9 Open Meeting Law, in particular NRS 241.033, for failing to notice her of these comments.  
10 This Office opined that the Board did not violate the Open Meeting Law "because the  
11 unilateral comments by one Board member did not cause the Board to redirect its agenda  
12 item to 'consider the character'" of the presenter's wife. OMLO 2005-10 (May 20, 2005).

13 Similarly, the comments made about Mr. Orndorff were during the deliberations of an  
14 agenda item noticed as "Public Hearing on Proposed Ordinance being Ordinance #189A, Bill  
15 #205 providing for County Land Sales and Lease Appraisals, costs and related requirements."  
16 The agenda item had nothing to do with the character and/or competence of Mr. Orndorff.  
17 The comments in a letter authored by a member of the public, which was read by the County  
18 Clerk/Treasurer, does not redirect the agenda item to consider the character and/or  
19 competence of Mr. Orndorff. This is especially true in this case because both the Chairman  
20 and District Attorney ended any conversation about Mr. Orndorff immediately upon hearing  
21 the content of the letter. Therefore, the Board did not violate the Open Meeting Law at its  
22 February 8, 2006 meeting.

23 B. Did Commissioners Black and Fowler violate the Open meeting Law by  
24 discussing and deliberating about a noticed item in private?

25 NRS 241.010 states:

26 In enacting this chapter, the Legislature finds and declares that  
27 all public bodies exist to aid in the conduct of the people's  
28 business. It is the intent of the law that their actions be taken  
29 *openly* and that their deliberations be conducted *openly*.  
30 [Emphasis added.]

31 NRS 241.015(2), in pertinent part, defines the term "meeting" as "[t]he gathering of members  
32 of a public body at which a *quorum* is present to deliberate toward a decision or to take action

1 on any matter over which the public body has supervision, control, jurisdiction or advisory  
2 power." [Emphasis added.] NRS 241.015(4) defines the term "quorum" as "a simple majority  
3 of the constituent membership of a public body or another proportion established by law."  
4 Section 5.01 of the NEVADA OPEN MEETING LAW MANUAL defines the term "deliberate" as to  
5 "examine, weigh and reflect upon the reasons for or against the choice." NEVADA OPEN  
6 MEETING LAW MANUAL, §5.01, at p. 30 (10<sup>th</sup> ed. 2005) NRS 241.020(1), in pertinent part,  
7 states, "[e]xcept as otherwise provided by specific statute, all *meetings* of public bodies *must*  
8 *be open and public*, and all persons must be permitted to attend any meeting of these public  
9 bodies." [Emphasis added.]

10 Here the Commission is made up of 3 members, which, pursuant to NRS 241.015(3)  
11 and (4), means that two members meeting to deliberate on any matter which the public body  
12 has jurisdiction or control over satisfies the definition of a meeting. During a recessed portion  
13 of the meeting, Commissioners Black and Fowler continued to deliberate about potential  
14 language for a proposed ordinance on the Board's agenda that had been previously  
15 discussed during the open portion of the meeting. By conducting these deliberations during a  
16 recessed portion of the meeting, the two members conducted the meeting in a closed and  
17 non-public forum. Even after being admonished by Chairman Bryant to cease their  
18 deliberations, the facts indicate that the two Commissioners continued with their deliberations  
19 during the recessed portion of the meeting, which shows a complete disregard for the Open  
20 Meeting Law. It can also be argued that this is a factual basis for the specific intent  
21 necessary to prove a criminal violation of the Open Meeting Law. Thus this Office finds that  
22 the members violated the Open Meeting Law, and this Office warns that future similar  
23 violations by either Commissioner may result in litigation and/or criminal prosecution pursuant  
24 to NRS 241.040.

25 V.


26 **CONCLUSION**

27 The Mineral County Board of Commissioners did not violate the Open Meeting Law by  
28 failing to serve personal notice on Mr. Orndorff because the Board was not obligated to notice

1 him of the comments of a private citizen that involved his character and/or competence since  
2 that was not the purpose of the agenda item. However, the facts indicate that Commissioners  
3 Black and Fowler violated the Open Meeting Law by continuing to deliberate during a  
4 recessed meeting. The Office of the Nevada Attorney General warns that future similar acts  
5 may result in litigation and/or criminal action against Commissioners Black and/or Fowler.

6 DATED this 22<sup>nd</sup> day of June 2006.

7 GEORGE J. CHANOS  
8 Attorney General

9  
10 By:   
11 NEIL A. ROMBARDO  
12 Senior Deputy Attorney General  
13 Nevada State Bar No. 6800  
14 100 North Carson Street  
15 Carson City, Nevada 89701-4717  
16 (775) 684-1205  
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1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 23rd day of June 2006, I mailed a copy of the Findings of Fact and  
4 Conclusions of Law, by mailing true copies by U.S. Mail to:

5 CHERI EMM-SMITH  
6 MINERAL COUNTY DISTRICT ATTORNEY  
7 PO BOX 1210  
8 HAWTHORNE NV 89415

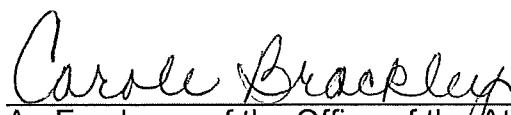
9 RICHARD BRYANT CHAIRMAN  
10 MINERAL COUNTY COMMISSIONERS  
11 PO BOX 1450  
12 HAWTHORNE NV 89415

13 SHELLEY HARTMANN CHAIRMAN  
14 MINERAL COUNTY ECONOMIC DEVELOPMENT  
15 AUTHORITY  
16 PO BOX 1635  
17 HAWTHORNE NV 89415

18 DONALD ORNDORFF DIRECTOR  
19 MINERAL COUNTY PARKS AND RECREATION  
20 PO BOX 1450  
21 HAWTHORNE NV 89415

22 NANCY BLACK  
23 MINERAL COUNTY COMMISSIONER  
24 PO BOX 1450  
25 HAWTHORNE NV 89415

26 EDWARD FOWLER  
27 MINERAL COUNTY COMMISSIONER  
28 PO BOX 1450  
HAWTHORNE NV 89415

  
An Employee of the Office of the Attorney General

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

NEVADA DEPARTMENT OF JUSTICE

In the Matter of:

HOMEOPATHIC MEDICAL EXAMINERS  
BOARD

Attorney General File No. 06-013

I.

INTRODUCTION

In a letter dated February 28, 2006, received by the Office of the Nevada Attorney General, Dr. Dan Royal (President of the Homeopathic Medical Examiners Board) filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law, chapter 241 of the Nevada Revised Statutes. In particular, President Royal alleges that the Homeopathic Medical Examiners Board (Board) violated the Open Meeting Law at its February 9, 2006 meeting by continuing to conduct a meeting after he attempted to unilaterally adjourn the meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, the audiotape recording,<sup>1</sup> and interviewed witnesses.

II.

FINDINGS OF FACT

On January 26, 2006, the Board adopted the 10<sup>th</sup> Edition of Robert's Rules of Order as its parliamentary procedure for conducting meetings.

On February 9, 2006, the Board properly noticed a public meeting pursuant to Nevada's Open Meeting Law. The President of the Board began the meeting with a roll call, and then, immediately allowed Senator Schneider to address the Board. The Board's agenda

<sup>1</sup> The audiotape recording did not contain the initial roll call or Senator Schneider's remarks because it was not clear to the operator of the tape recorder that the meeting was called to order.



1 did not contain an agenda statement indicating that Senator Schneider would address the  
2 Board or an agenda statement related to his comments. Senator Schneider's comments  
3 included a request that the Board stop its "adversarial" relationship with the Nevada  
4 Institutional Review Board. He also called the Board "dysfunctional" and told the members  
5 that they were acting like "a bad homeowner's association."<sup>2</sup> Senator Schneider also  
6 supported President Royal's conduct as President of the Board. At the conclusion of the  
7 Senator's comments, the Board considered the issues raised by Senator Schneider, and  
8 then, President Royal immediately and unilaterally attempted to adjourn the meeting. After  
9 which, he left the meeting with Senator Schneider and others. President Royal neither called  
10 for further public comment nor a motion to adjourn.<sup>3</sup>

11 On the advice of legal counsel, the Board passed a motion to proceed with the meeting  
12 and not adjourn. Item 5 on the agenda resulted in President Royal being removed from his  
13 position and member Dr. David Edwards replacing him as President of the Board. The Board  
14 completed the remaining items on the agenda and called for public comment. The Board  
15 then adjourned the meeting.

16 III.

17 ISSUE

18 Did the Board violate the Open Meeting Law by proceeding with the meeting after  
19 President Royal attempted to unilaterally adjourn the meeting?

20 IV.

21 CONCLUSIONS OF LAW

22 NRS 241.020(2)(c) requires:

23 2. Except in an emergency, written notice of all meetings must be  
24 given at least 3 working days before the meeting. The notice must  
include:

25 (c) An agenda consisting of:  
26 (1) A clear and complete statement of the topics scheduled to be  
considered during the meeting.

27 \_\_\_\_\_  
28 <sup>2</sup> These quotes came from an affidavit provided to this Office by President Royal.

<sup>3</sup> President Royal alleges that he closed the meeting pursuant to a perceived emergency under Robert's  
Rules of Order, which will be discussed *infra*.

1 (2) A list describing the items on which action may be taken and  
clearly denoting that action may be taken on those items.

2 (3) A period devoted to comments by the general public, if any,  
3 and discussion of those comments. No action may be taken upon  
4 a matter raised under this item of the agenda until the matter itself  
has been specifically included on an agenda as an item upon  
which action may be taken pursuant to subparagraph (2).

5 Further, NRS 241.015(2) defines a "meeting" as "[t]he gathering of members of a public body  
6 at which a *quorum* is present to deliberate toward a decision or to take action on any matter  
7 over which the public body has supervision, control, jurisdiction or advisory power." [Emphasis  
8 added.] NRS 241.015(4) defines a "quorum" as "a simple majority of the constituent  
9 membership of a public body or another proportion established by law."

10 Here, President Royal began the meeting and allowed Senator Schneider to address  
11 the Board. Since Senator Schneider's proposed comments were not on the agenda and they  
12 did not relate to a specific agenda item, this Office must presume that he made these  
13 comments pursuant to the public comment portion of the meeting. Without this presumption,  
14 President Royal violated the Open Meeting Law by allowing discussion regarding an item not  
15 on the agenda. Even if this Office presumes that Senator Schneider addressed the Board  
16 pursuant to the public comment portion of the meeting, President Royal violated the Open  
17 Meeting Law by not calling for or permitting further public comment prior to unilaterally  
18 adjourning the meeting. However, since a quorum of the Board remained and passed a  
19 motion to proceed with the meeting, the President's violation of the Open Meeting Law was  
20 cured by the remaining board members because they called for further public comment at the  
21 end of the meeting. Thus, the Board immediately cured the President's violation of the Open  
22 Meeting Law.

23 With regard to Robert's Rules of Order, the parliamentary rules of procedure of a board  
24 do not and cannot preempt Nevada's Open Meeting Law. See A. Schwing, OPEN MEETING  
25 LAWS 2d § 10.68, at 587-88 (2000). Here, President Royal relies on the emergency provisions  
26 of Robert's Rules of Order for adjourning the meeting. He personally declared the Board in  
27 crisis because of the comments of Senator Schneider and adjourned the meeting. In doing  
28 so, he specifically relied on the "Ordinary Practice in Adjourning" and "Cases Where the

1 Assembly can Adjourn without a Motion” sections of Robert’s Rules of Order (10<sup>th</sup> ed.), pp. 84-  
2 85 and pp. 232-33 respectively. To begin with, Robert’s Rules of Order requires a motion to  
3 adjourn unless certain circumstances exist.<sup>4</sup> Further, Nevada’s Open Meeting Law permits a  
4 public body to hold a meeting with or without the “president” or “chair” of the public body if a  
5 quorum is present. See NRS 241.015(1). Thus, Robert’s Rules of Order and Nevada’s Open  
6 Meeting Law are consistent on this issue, and as occurred in this instance, a public body may  
7 choose to proceed with a properly noticed agenda with or without the chair if a quorum is  
8 present.

9 Further, President Royal misapplied Robert’s Rules of Order’s emergency clause to  
10 this situation. That clause states, “[i]n the event of fire, riot, or other extreme emergency, if  
11 the chair believes taking time for a vote on adjourning would be dangerous to those present,  
12 he should declare the meeting adjourned . . . .” Robert’s Rules of Order (10<sup>th</sup> ed.), p. 84,  
13 ll. 32- 35. The only other instances when a chair may unilaterally adjourn a meeting is if the  
14 meeting is to end at a particular time or if the agenda has been completed by the public body  
15 and there is no further business to be completed by the public body. Robert’s Rules of Order  
16 (10<sup>th</sup> ed.), p. 232 I. 30 through 233, I. 17. Under both circumstances, however, the chair  
17 should indicate his intent to adjourn the meeting in case the members of the public body do  
18 not wish to adjourn for some reason. (See Robert’s Rules of Order (10<sup>th</sup> ed.), p. 232 I. 30  
19 through 233, I. 17 for examples.) By unilaterally attempting to adjourn a properly noticed and  
20 agendized meeting, based upon circumstances which do not amount to an actual emergency,  
21 President Royal acted inconsistently with Robert’s Rules of Order and Nevada’s Open  
22 Meeting Law. However, the immediate and subsequent actions of the Board cured the Open  
23 Meeting Law violation because a quorum of the Board resumed the meeting with all matters  
24 identified on the agenda being considered and the Board conducted a public comment period  
25 prior to properly adjourning the meeting.

26 ///  
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<sup>4</sup> The certain circumstances do not exist in this case and will be discussed *infra*.

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V.


**CONCLUSION**

The Homeopathic Medical Examiners Board averted an Open Meeting Law violation by continuing the meeting and allowing for public comment without President Royal. The Office of the Nevada Attorney General warns that acts similar to those that took place here by the President can be construed as an intentional violation of the Open Meeting Law subjecting the perpetrator to possible civil and criminal action. Therefore, the Office of the Nevada Attorney General strongly advises the Homeopathic Medical Examiners Board and its individual members to follow all provisions of the Open Meeting Law without exception.

DATED this 4<sup>th</sup> day of April, 2006.

GEORGE J. CHANOS  
Attorney General

By:

  
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 4<sup>th</sup> day of April, 2006, I mailed a copy of the Findings of Fact  
4 and Conclusions of Law, by mailing true copies by U.S. Mail to:

5  
6 DANIEL ROYAL  
7 10120 SOUTH EASTERN AVE #100  
8 HENDERSON NEVADA 89052

9 MARY LOU HEACOCK  
10 BOARD OF HOMEOPATHIC MEDICAL EXAMINERS  
11 3626 PECOS MCLEOD SUITE 5  
12 LAS VEGAS NV 89121

13 *Daniel Frank*  
14 An Employee of the Office of the Attorney General  
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**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

4	In the Matter of:	}	Attorney General File No. 06-016
5	Nevada State Board of Homeopathic Medical	}	OMLO 2006-05
6	Examiners and Nevada Institutional Review	}	
7	Board Standing Committee (Subcommittee of the Nevada State Board of Homeopathic Medical Examiners)	}	

I.

**INTRODUCTION**

In a letter received April 25, 2006, by the Office of the Nevada Attorney General, Robert Gentry, Executive Director of the Nevada Institutional Review Board (NIRB) filed a complaint with this office alleging a violation of the Nevada Open Meeting Law, NRS chapter 241. In particular, Mr. Gentry alleges that the Nevada State Board of Homeopathic Medical Examiners (Board) violated the Open Meeting Law by failing to provide requested public notices of the April 1, 2006 and April 18, 2006 meetings.

In a letter received April 10, 2006, by this office, Daniel J. Friesen, President of the NIRB, filed a complaint with this office alleging a violation of the Nevada Open Meeting Law, NRS chapter 241. In particular, President Friesen alleges that the Board violated the Open Meeting Law by creating Committees without "any discussion or approval of any duties, authority, or powers to act" at its February 16, 2006 meeting.

In a letter received April 25, 2006, by this office, Dr. Daniel F. Royal, a member of the Board, filed a complaint with this office alleging a violation of the Nevada Open Meeting Law, NRS chapter 241. In particular, Dr. Royal alleges that the NIRB Standing Committee (Committee) violated the Open Meeting Law by failing to provide minutes for the Committee's March 3, 2006, March 16, 2006, and March 28, 2006 meetings and/or making decisions outside of an open meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that

1 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
2 investigating this matter, this office reviewed the complaints, available agendas, minutes,  
3 supporting documents, and the audiotape recordings of the February 16, 2006 meeting.

4 **II.**

5 **FINDINGS OF FACT**

6 On February 16, 2006, the Board conducted a properly noticed meeting. At the  
7 meeting and after significant discussion, the Board passed a motion to allow the Chair to  
8 appoint members to a variety of subcommittees. The Chair, pursuant to the motion, created  
9 the subcommittees noticed on the agenda and appointed members to the subcommittees.  
10 The agenda clearly stated the duties of each subcommittee.

11 On April 1, 2006 and April 18, 2006, the Board conducted properly noticed meetings.  
12 Prior to those meetings, on March 29, 2006, Mr. Gentry requested copies of all notices and  
13 support material of the Board. The Board failed to provide the requested information.<sup>1</sup>

14 On March 3, 2006, March 16, 2006, and March 28, 2006, the Committee conducted  
15 public meetings and took action in open session.<sup>2</sup> Subsequent to the meetings, Dr. Daniel  
16 Royal requested the written minutes and audiotapes of these meetings. As of the date of this  
17 opinion, the Committee has failed to produce the written minutes or audio recordings to Dr.  
18 Royal, and the Committee has been unable to produce the minutes and audio recordings to  
19 this office after numerous requests.

20 **III.**

21 **ISSUES**

22 1. Did the Board violate the Open Meeting Law at its February 16, 2006 meeting  
23 for failing to discuss or approve any duties, authority, or powers for each subcommittee?

24 \_\_\_\_\_  
25 <sup>1</sup> It must be noted that the author of this opinion interviewed Mr. Gentry on June 20, 2006. Mr. Gentry  
indicated that the Board has never provided a notice since his March 29, 2006 request.

26 <sup>2</sup> This Office has a policy of accepting the word of the public lawyers representing public bodies regarding  
27 Open Meeting Law issues. In this case, the author of this opinion interviewed Deputy Attorney General (DAG)  
Ned Reed. DAG Reed stated that he attended the March 3 and 28 meetings and that the Board noticed the  
28 meeting and took action in open session. He also stated that he was aware of the March 16 meeting, but he  
could not attend due to a scheduling conflict. However, he stated that he was aware that the meeting occurred in  
open session, and the Committee's actions also occurred in open session.





1           2.     Did the Board violate the Open Meeting Law by failing to provide Mr. Gentry  
2 notices and support material after his March 29, 2006 request for such information?

3           NRS 241.020, in pertinent part, states:

4                     3.     Minimum public notice is:

5                             (b) Providing a copy of the notice to any person who has  
6 requested notice of the meetings of the public body. A request for  
7 notice lapses 6 months after it is made. The public body shall  
8 inform the requester of this fact by enclosure with, notation upon or  
9 text included within the first notice sent. The notice must be:

10                                 (1) Delivered to the postal service used by the public body not  
11 later than 9 a.m. of the third working day before the meeting for  
12 transmittal to the requester by regular mail; or

13                                 (2) If feasible for the public body and the requester has agreed to  
14 receive the public notice by electronic mail, transmitted to the  
15 requester by electronic mail sent not later than 9 a.m. of the third  
16 working day before the meeting.

17                     5.     Upon any request, a public body shall provide, at no charge, at  
18 least one copy of:

19                             (c) . . . , any other supporting material provided to the members of  
20 the public body for an item on the agenda . . . .

21                     6.     A copy of supporting material required to be provided upon  
22 request pursuant to paragraph (c) of subsection 5 must be:

23                             (a) If the supporting material is provided to the members of the  
24 public body before the meeting, made available to the requester at  
25 the time the material is provided to the members of the public body;  
26 or

27                             (b) If the supporting material is provided to the members of the  
28 public body at the meeting, made available at the meeting to the  
29 requester at the same time the material is provided to the members  
30 of the public body.

31                             If the requester has agreed to receive the information and material  
32 set forth in subsection 5 by electronic mail, the public body shall, if  
33 feasible, provide the information and material by electronic mail.

34 In OMLO 99-05 (March 19, 1999), this office opined that a public body may not charge to mail  
35 an agenda requested pursuant to NRS 241.020(3)(b). In Section 6.06 of the NEVADA OPEN  
36 MEETING LAW MANUAL, it states, "agenda supporting material *need not be mailed* but must be  
37 made available over the counter when the material is ready and has been distributed to  
38 members of the public body and at the meeting." NEVADA OPEN MEETING LAW MANUAL, § 6.06,  
39 at 44-45 (10th ed. 2005). See OMLO 98-01 (January 21, 1998); OMLO 2003-06 (February  
40 27, 2003); and NRS 241.020(6).

41 ///

1 Here, Mr. Gentry requested the Board's agendas in writing. The Board repeatedly  
2 failed to send the requested agendas to Mr. Gentry. Pursuant to NRS 241.020(3)(b), the  
3 Board has violated the Open Meeting Law. However, this is the first violation of the Open  
4 Meeting Law by the Board. Therefore, at this time, this office will not take legal action against  
5 the Board, but this office advises the Board to immediately start mailing the Board's agendas  
6 to Mr. Gentry upon his requests. Failure to do so, on behalf of the Board, may result in  
7 litigation.

8 With regard to the requested support material, the Board is not legally obligated to mail  
9 the requested support material. However, in this case, Mr. Gentry agreed to receive the  
10 support material via e-mail. Thus, pursuant to NRS 241.020(6), the Board must e-mail Mr.  
11 Gentry any support material that can be feasibly e-mailed. Otherwise, the Board is only  
12 legally obligated to make the support material available for copying, at no cost, to Mr. Gentry.  
13 This office trusts and expects the Board to comply with this portion of this opinion, and failure  
14 to do so may also result in litigation.

15 3. *Did the Committee violate the Open Meeting Law by failing to provide Dr. Royal*  
16 *with the written requested minutes of the March 3, 2006, March 16, 2006, and March 28,*  
17 *2006 Committee meetings and/or by taking action outside an open meeting?*

18 NRS 241.035(1) provides:

19 1. Each public body *shall* keep written minutes of each of its  
20 meetings, including:

21 (a) The date, time and place of the meeting.

22 (b) Those members of the public body who were present and  
23 those who were absent.

24 (c) The substance of all matters proposed, discussed or decided  
25 and, at the request of any member, a record of each member's  
26 vote on any matter decided by vote.

27 (d) The substance of remarks made by any member of the  
28 general public who addresses the public body if he requests that  
the minutes reflect his remarks or, if he has prepared written  
remarks, a copy of his prepared remarks if he submits a copy for  
inclusion.

(e) Any other information which any member of the public body  
requests to be included or reflected in the minutes. [Emphasis  
added.]

///

1 "Minutes or audio recordings of public meetings are declared by the Open Meeting Law to be  
2 public records and must be available for *inspection* by the public within 30 working days after  
3 the meeting is adjourned." See NEVADA OPEN MEETING LAW MANUAL, § 10.03, at 70 (10th ed.  
4 2005) (emphasis added) citing NRS 241.030(2) and OMLO 99-06 (March 19, 1999). "[I]f a  
5 person wants a copy of the minutes or tapes that are public records, public bodies should  
6 consult the open records law or other statutes dealing with fees to determine what, if any,  
7 fees may be charged." NEVADA OPEN MEETING LAW MANUAL, § 10.05, at 72 (10th ed. 2005).  
8 See NRS chapter 239 for public records law. The Open Meeting Law requires a public body  
9 to create both written minutes and some type of audio recording. See NRS 241.035(1) and  
10 (4). Both must be made available for inspection by the public within 30 working days of the  
11 meeting. This office further opines that the phrase "made available for inspection by the  
12 public" in NRS 241.035(2) contemplates that the public body must make the minutes readily  
13 accessible from its principal place of business similar to making support material available to  
14 the public.

15 In this case, after several requests, the Committee has been unable to produce written  
16 minutes or audio recordings of the meetings to Dr. Royal or this office.<sup>4</sup> Since the meetings  
17 occurred in March, more than 30 working days have passed from the dates of the meetings.  
18 Therefore, this office finds that the Committee violated the Open Meeting Law because  
19 neither the written minutes nor the audio recordings of the meetings are being made  
20 "available for inspection by the public." NRS 241.035(2). At this time, this office will not  
21 pursue litigation. However, this office advises the Committee to make the present audio  
22 recordings immediately available to the public for inspection and to produce the current  
23 minutes as soon as possible. Failure to do so, and any failures of the Committee to comply  
24 with NRS 241.035(2) in the future, may result in litigation.

25 Although this office did not receive a complaint regarding the Committee's agenda  
26 statements, it must be pointed out that the Committee's agenda statements do not comply

27 \_\_\_\_\_  
28 <sup>4</sup> A conversation with Dr. Fuller Royal, Secretary of the Board, indicated that the Committee is not taking  
minutes, but instead, the members are keeping handwritten personal notes. Such notes do not qualify as  
minutes, as required by NRS 241.035, because they are not being made available to the public.

1 with the Open Meeting Law. NRS 241.020 requires a public body to notice agenda items  
2 clearly and completely. Section 7.02 of the NEVADA OPEN MEETING LAW MANUAL states,  
3 "Generic agenda items such as . . . 'Old Business' do not provide a clear and complete  
4 statement of the topics scheduled to be considered. Such items should not be listed as  
5 action items . . . ." NEVADA OPEN MEETING LAW MANUAL, § 7.02, at 56 (10th ed. 2005) citing  
6 OMLO 99-03 (January 11, 1999). In this instance, the Committee's March 28, 2006 agenda  
7 notices item 5 as "Old Business" and is denoted as an action item. Further, the March 16,  
8 2006 agenda notices item 6 as a "report on interaction with members of the Legislature" and  
9 is denoted as an action item. The noticing of these generic items as action items invites  
10 "trouble because discussions spawned under them may be of great public interest and may  
11 lead to deliberations or actions without the benefit of public scrutiny or input" because the  
12 items are not clearly and completely noticed to the public. NEVADA OPEN MEETING LAW  
13 MANUAL, § 7.02, at 56 (10th ed. 2005). Thus, the Committee violated the Open Meeting Law  
14 by failing to properly notice its meetings as it relates to the content of the agendas. Since the  
15 Committee has no previous history of Open Meeting Law violations, this office will not take  
16 action at this time. However, this office advises the Committee to review its policies in  
17 agenda drafting to ensure that they comply with this opinion. This office also advises that  
18 failure to comply with this opinion and the NEVADA OPEN MEETING LAW MANUAL on this subject  
19 may lead to future litigation.

20 **V.**

21 **CONCLUSION**

22 The Office of the Nevada Attorney General finds that the Nevada State Board of  
23 Homeopathic Medical Examiners violated the Open Meeting Law by failing to mail its public  
24 notices to Mr. Gentry and by its failure to make available support material to Mr. Gentry upon  
25 his request.


26 The Office of the Nevada Attorney General finds that the NIRB Standing Committee, a  
27 subcommittee of the Nevada State Board of Homeopathic Medical Examiners, also violated  
28 the Open Meeting Law by failing to make available for inspection audio recordings and/or

1 written minutes within 30 days of the meetings. The Office of the Nevada Attorney General  
2 also finds that the NIRB Standing Committee violated the Open Meeting Law by failing to  
3 clearly and completely state agenda items on its public notice.

4 The Office of the Nevada Attorney General admonishes both public bodies to comply  
5 with this opinion, and a failure to do so, by either public body, may result in litigation.

6 DATED this 31<sup>st</sup> day of July, 2006.

7 GEORGE J. CHANOS  
8 Attorney General

9  
10 By:   
11 NEIL A. ROMBARDO  
12 Senior Deputy Attorney General  
13 Nevada State Bar No. 6800  
14 100 North Carson Street  
15 Carson City, Nevada 89701-4717  
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1 **CERTIFICATE OF MAILING**

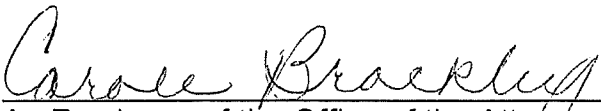
2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 1st day of August, 2006, I mailed a copy of the Findings of  
4 Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

5  
6 Mary Lou Heacock  
7 Board of Homeopathic Medical Examiners  
8 3626 Pecos McLeod, Suite 5  
9 Las Vegas, NV 89121

10 Dean J. Friesen, President  
11 Nevada Institutional Review Board  
12 10624 S. Eastern Ave., Suite A-006  
13 Henderson, NV 89052

14 Robert K. Gentry, Executive Director  
15 Nevada Institutional Review Board  
16 10624 S. Eastern Ave., Suite A-006  
17 Henderson, NV 89052

18 Daniel F. Royal, DO, HMD, JD  
19 New Hope Medical LLC  
20 10120 S. Eastern Ave., Suite 100  
21 Henderson, NV 89052

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An Employee of the Office of the Attorney General

1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE

4 In the Matter of:

5  
6 THE BOARD OF TRUSTEES OF THE  
7 MINERAL COUNTY SCHOOL DISTRICT

Attorney General File No. 06-018 and  
06-021

8 I.

9 INTRODUCTION

10 In letters received April 26, 2006 and April 28, 2006 by the Office of the Nevada  
11 Attorney General, Leslie A. Banks, Sue Banks, Willow Phillips, and Donna Webster  
12 (Complainants) filed complaints with this Office alleging violations of the Nevada Open  
13 Meeting Law, NRS Chapter 241.<sup>1</sup> In particular, Complainants allege that The Board of  
14 Trustees of the Mineral County School District (Board) violated the Open Meeting Law at its  
15 April 10, 2006 and April 25, 2006 meetings by: (1) failing to notice Leslie A. Banks that the  
16 Board may consider her character, alleged misconduct, professional competence, or health;  
17 (2) failing to notice Mr. Cook, Superintendent of the Mineral County School District, that his  
18 letter of admonition would be considered; and (3) conducting serial communications and/or by  
19 taking action outside an open meeting.<sup>2</sup>

20 In a letter received June 2, 2006, by the Office of the Nevada Attorney General,  
21 Kenneth Chase filed a complaint with this Office alleging violations of the Nevada Open  
22

23 <sup>1</sup> Pursuant to this Office's Open Meeting Law procedures, the complaints were sent to Superintendent  
24 Cook for a response on the part of the Board. Superintendent Cook's response pointed out similar violations as  
those alleged. Therefore, in effect, his response was also treated as a complaint that will be addressed herein.

25 <sup>2</sup> The Complainants also complained about the Board's February 15, 2006, February 28, 2006, March 2,  
26 2006, and March 14, 2006 meetings. The statute of limitations to "void" an action taken in violation of the Open  
Meeting Law is 60 days. The statute of limitations to receive an "injunction" to prevent similar future Open  
27 Meeting Law violations is 120 days. NRS 241.036. With regard to these meetings, the Complainants filed their  
complaints after the 60-day statute of limitations, and the 120-day statute of limitations has also expired as well.  
28 As a policy, if the statute of limitations has expired, this Office does not opine upon potential Open Meeting Law  
violations that may have occurred at those meetings. However, with regard to issue A, this office will discuss the  
past meetings for foundational purposes, and because it is alleged that the Board continues to commit related on-  
going Open Meeting Law violations with regard to that particular issue, this office will opine upon those meetings  
for the sake of clarity.

1 Meeting Law, NRS Chapter 241. In particular, Mr. Chase alleges that the Board violated the  
2 Open Meeting Law at its April 25, 2006 meeting by failing to notice him that the Board may  
3 consider his character, alleged misconduct, professional competence, or health.<sup>3</sup>

4 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
5 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
6 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
7 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
8 and audiotape recordings.

9 II.

10 FINDINGS OF FACT

11 On February 15, 2006, the Board conducted an open meeting. An item on the agenda  
12 for that meeting was "Discussion and appropriate action to eliminate the Part-time  
13 Bookkeeper position and to combine the Part-time Bookkeeper and Executive Secretary  
14 positions, to include the salary for the above mentioned position." The Board tabled this item  
15 until the next meeting because it did not want to eliminate the Part-time Bookkeeper position;  
16 the Board wanted to simply combine the two positions, and the Board felt the agenda did not  
17 allow for such action.

18 On February 28, 2006, the Board considered the tabled item. During that meeting, the  
19 Board passed a motion to combine the two positions.

20 On March 14, 2006, the Board deliberated and took action on agenda item 6, which  
21 stated, in pertinent part, "Discussion and appropriate action on designation of following staff  
22 positions as confidential classified or classified: . . . Executive Secretary."

23 On April 25, 2006, while discussing the minutes of the April 10, 2006 meeting, Mr.  
24 Palmer mentioned that Ms. Banks, the Executive Secretary, drafted the minutes. Trustee  
25 Haak stated she did not like the way the minutes had been drafted. She felt as if her  
26 comments were misrepresented by the minutes.

27 \_\_\_\_\_  
28 <sup>3</sup> Mr. Chase's complaint was assigned AG File No. 06-021. However, since the facts and circumstances  
are the same as, or similar to, AG File No. 06-018, this Office is drafting this single opinion for both AG File Nos.  
06-018 and 06-021. This complaint is issue D of this opinion.



1 Ms. Banks is the Executive Secretary. Ms. Banks filed a complaint with this Office  
2 alleging a violation of the Open Meeting Law because she was not personally noticed of any  
3 of these meetings pursuant to NRS 241.033. However, at no time during the meetings did the  
4 Board discuss the character, alleged misconduct, professional competence, or health of Ms.  
5 Banks.

6 On March 2, 2006, the Board conducted an open meeting to consider the character,  
7 alleged misconduct, professional competence, or health of Superintendent Cook. Mr. Cook  
8 admits that he was properly noticed of this meeting. At the meeting, the Board took action to  
9 authorize a letter of admonition to Superintendent Cook regarding his alleged misconduct,  
10 and the Board attorney was to prepare the letter.

11 Subsequent to the meeting, the Board attorney prepared the letter. Chairman  
12 Schumann did not approve of the letter prepared by the Board's attorney and changed the  
13 letter. He then took the amended letter to other members of the Board to solicit and obtain  
14 three trustees' signatures; there are five members on the Board. Trustee Chase told  
15 Chairman Schumann that he would not sign the letter because he felt Chairman Schumann  
16 was violating the Open Meeting Law by obtaining the signatures.

17 On April 10, 2006, Chairman Schumann placed the letter of admonition as to the  
18 Superintendent on the agenda. During that item of the agenda, he publicly disclosed that he  
19 obtained three signatures from other trustees outside a meeting of the Board and that, if he  
20 violated the Open Meeting Law, he did not intend to do so. The matter was tabled and  
21 reconsidered at the April 25, 2006 meeting, at which time the Board approved the letter of  
22 admonition. During both of these meetings, the Board did not reconsider Superintendent  
23 Cook's performance or accept new information. Both meetings only related to the Board's  
24 approval of the letter of admonition.

25 Also, at the April 25, 2006 meeting, Trustee Chase left the meeting prior to public  
26 comment. During the public comment portion of the meeting, Mr. Richard Bishop, a member  
27 of the public, read a letter into the record referring to the incident with Chairman Schumann.  
28 As a part of that letter, Mr. Bishop stated that trustees should not accuse other trustees of

1 Open Meeting Law violations as well as other references to Mr. Chase. Mr. Chase filed a  
2 complaint with this Office alleging that the Board considered his character, alleged  
3 misconduct, professional competence, or health without providing personal notice to Trustee  
4 Chase.

5 III.

6 ISSUE

7 A. Did the Board violate the Open Meeting Law by failing to personally notice Ms.  
8 Banks that it was discussing her position?

9 B. Did the Board violate the Open Meeting Law by failing to personally notice  
10 Superintendent Cook of the April 10, 2005 and April 25, 2005 meetings?

11 C. Did Chairman Schumann violate the Open Meeting Law by obtaining the  
12 signatures of other trustees on the letter of admonition outside of an open meeting?

13 D. Did the Board violate the Open Meeting Law by permitting Mr. Bishop to make  
14 reference to Trustee Chase, during the public comment period, without personally noticing  
15 Trustee Chase?

16 IV.

17 CONCLUSIONS OF LAW

18 A. Did the Board violate the Open Meeting Law by failing to personally notice Ms.  
19 Banks that it was discussing her position?

20 NRS 241.033(1) and (7) state:

21 1. A public body shall not hold a meeting to consider the  
22 character, alleged misconduct, professional competence, or  
23 physical or mental health of any person or to consider an appeal  
by a person of the results of an examination conducted by or on  
behalf of the public body unless it has:

24 (a) Given written notice to that person of the time and place of  
the meeting; and

25 (b) Received proof of service of the notice.

26 7. For the purposes of this section, casual or tangential  
27 references to a person or the name of a person during a closed  
meeting do not constitute consideration of the character, alleged  
28 misconduct, professional competence, or physical or mental  
health of the person.

1 This Office has consistently opined that the mere mention of a person does not require that  
2 the person be personally noticed of the meeting. See NEVADA OPEN MEETING LAW MANUAL,  
3 §6.09, AT 49 (10<sup>th</sup> ed. 2005) citing OMLO 2004-14 (April 20, 2004); OMLO 2003-18 (April 21,  
4 2003); and OMLO 2003-28 (November 14, 2003).

5 Here, in February of 2006, the Board deliberated and took action over consolidating  
6 the Part-time Bookkeeper position and the Executive Secretary position. At the March 14,  
7 2006 meeting, the Board deliberated and took action on whether the Executive Secretary  
8 position should be a classified or confidential classified position, and at the April 25, 2006  
9 meeting, the Board briefly discussed the April 10, 2006 meeting's minutes, which Ms. Banks,  
10 the Executive Secretary, happened to draft. In all of these instances, the objective of the  
11 Board was not to consider the "character, alleged misconduct, professional competence, or  
12 health" of Ms. Banks. Instead, the Board was making personnel decisions related to job  
13 duties and classifications and/or discussing whether to approve the minutes as written. Any  
14 mention of Ms. Banks was merely tangential to the actual issue, and as a result, the Board  
15 was not obligated to notice Ms. Banks of the meetings and did not violate the Open Meeting  
16 Law.

17 B. Did the Board violate the Open Meeting Law by failing to personally notice  
18 Superintendent Cook of the April 10, 2006 and April 25, 2006 meetings?

19 The pertinent law relevant to this matter is the same as stated above in issue A.

20 At the April 10, 2006 and April 25, 2006 meetings, the Board deliberated and took  
21 action on the letter of admonition for Superintendent Cook. The Board voted to send a letter  
22 of admonition to Superintendent Cook at its March 2, 2006 meeting after properly noticing  
23 Superintendent Cook. At no time during the April meetings did the Board consider the  
24 "character, alleged misconduct, professional competence, or health" of Superintendent Cook.  
25 The sole purpose of the meetings was the approval of the letter of admonition. Thus NRS  
26 241.033 did not obligate the Board to notice Superintendent Cook of those meetings, and the  
27 Board did not violate the Open Meeting Law.

28 ///

1 C. Did Chairman Schumann violate the Open Meeting Law by obtaining the  
2 signatures of other trustees on the letter of admonition outside of an open meeting?

3 NRS 241.010 states:

4 In enacting this Chapter, the Legislature finds and declares that all  
5 public bodies exist to aid in the conduct of the people's business. It  
6 is the intent of the law that their actions be taken openly and that  
7 their deliberations be conducted openly.

8 NRS 241.015(1)(a) and (b) define "action" as:

9 (a) A decision made by a majority of the members present during  
10 a meeting of a public body;

11 (b) A commitment or promise made by a majority of the members  
12 present during a meeting of a public body;

13 NRS 241.015(2), in pertinent part, defines "meeting" as:

14 2. "Meeting":

15 (a) Except as otherwise provided in paragraph (b), means:

16 (1) The gathering of members of a public body at which a  
17 quorum is present to deliberate toward a decision or to take action  
18 on any matter over which the public body has supervision, control,  
19 jurisdiction or advisory power.

20 (2) Any series of gatherings of members of a public body at  
21 which:

22 (I) Less than a quorum is present at any individual gathering;

23 (II) The members of the public body attending one or more of the  
24 gatherings collectively constitute a quorum; and

25 (III) The series of gatherings was held with the specific intent to  
26 avoid the provisions of this Chapter.

27 During the March 2, 2006 meeting, the Board approved a letter of admonition to be  
28 drafted by the Board's attorney. The motion is unclear whether the final letter of admonition  
would be returned for final Board approval. However, by unilaterally changing the letter,  
Chairman Schumann exceeded the action taken at the March 2, 2006 meeting of simply  
obtaining signatures as a mere affirmation of the action to send the letter. In effect, this was  
a new action on a different letter. NRS 241.010 requires all "actions" of a public body to occur  
in an open meeting. Chairman Schumann obtained a decision or received a consensus of  
the Board by receiving three out of five signatures, which is an action pursuant to  
NRS 241.015(1)(a). Chairman Schumann did this outside of an open meeting. In effect, this  
is a perfect example of "serial communications" as defined in NRS 241.015(2)(a)(2) and thus,  
a violation of the Open Meeting Law.

1           However, Chairman Schumann disclosed his violation in an open meeting, which  
2 mitigates the violation. Further, the Board took action on the letter of admonition in an open  
3 meeting on April 25, 2006, which further cures the violation. As a result, at this time, this  
4 Office will not pursue legal action against the Board, but advises the Board and its members  
5 to avoid serial communication as defined above in NRS 241.015(2)(a)(2) and NEVADA OPEN  
6 MEETING LAW MANUAL, §5.08, at 34-37 (10<sup>th</sup> ed. 2005).

7           D.     Did the Board violate the Open Meeting Law by permitting Mr. Bishop to make  
8 reference to Trustee Chase, during the public comment period, without personally noticing  
9 Trustee Chase?

10           According to NRS 241.033, a public body must personally notice someone of a  
11 meeting if that meeting is held to consider the "character, alleged misconduct, professional  
12 competence, or health" of a person. This Office previously opined that it will consider the  
13 actual discussion at a meeting to determine whether notice is required pursuant to NRS  
14 241.033. See OMLO 2002-24 (May 28, 2003). In doing so, this Office will look to see if the  
15 public body considered, deliberated over, or thought seriously about the person's "character,  
16 alleged misconduct, professional competence, or physical or mental health." See *generally*  
17 OMLO 2002-34 (August 2, 2002).

18           Here the comments at issue were made by a member of the general public. The  
19 Board cannot be expected to control the comments of a member of the general public, nor  
20 can the Board be held responsible for knowing what a member of the public may say about a  
21 person during the public comment period of a meeting. Further, in this circumstance, the  
22 Board did not consider the "character, alleged misconduct, professional competence, or  
23 health" of Trustee Chase. Instead, the Board merely heard the comments of a member of the  
24 general public, Mr. Bishop, which tangentially related to Trustee Chase. Thus the Board did  
25 not violate the Open Meeting Law by permitting Mr. Bishop to make reference to Trustee  
26 Chase.

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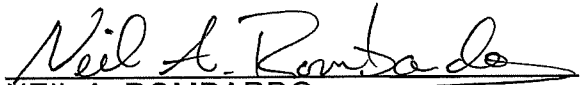
V.

CONCLUSION

The Board of Trustees of the Mineral County School District did not violate the Open Meeting Law by failing to personally notice, pursuant to NRS 241.033, either Ms. Banks, Superintendent Cook, or Trustee Chase. The Board of Trustees of the Mineral County School District, in particular Chairman Schumann, violated the Open Meeting Law by taking action on an item through serial communications. The Office of the Nevada Attorney General warns that future similar actions may result in litigation, but at this time, because of the disclosure of Chairman Schumann and the vote taken in a subsequent meeting approving the letter, the Office of the Nevada Attorney General will not pursue legal action. Thus, the Office of the Nevada Attorney General is closing its file on this issue at this time.

DATED this 17<sup>th</sup> day of August 2006.

GEORGE J. CHANOS  
Attorney General

By:   
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 18<sup>th</sup> day of August 2006, I mailed a copy of the Findings of Fact  
4 and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Kenneth W. Chase  
6 Box 545  
7 Hawthorne, NV 89415

8 Leslie A. Banks  
9 P.O. Box 1665  
10 Hawthorne, NV 89415

11 Willow Phillips  
12 P.O. Box 566  
13 Hawthorne, NV 89415

14 Sue Banks  
15 P.O. Box 976  
16 Hawthorne, NV 89415

17 Donna J. Webster  
18 P.O. Box 496  
19 Hawthorne, NV 89415

20 James T. Winkler, Esq.  
21 Littler Mendelson  
22 3960 Howard Hughes Parkway  
23 Suite 300  
24 Las Vegas, NV 89109

25   
26 An Employee of the Office of the Attorney General

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**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

In the Matter of:  
The Board of Trustees of the Esmeralda  
County School District

Attorney General File No. 06-019

**I.**

**INTRODUCTION**

In a letter received May 25, 2006, by the Office of the Nevada Attorney General, Ms. Sherry Harrison filed a complaint with this office alleging a violation of the Nevada Open Meeting Law, NRS chapter 241. In particular, Ms. Harrison alleges that the Board of Trustees of the Esmeralda County School District (Board) violated the Open Meeting Law at its April 25, 2006 meeting by noticing the meeting to be videoconferenced to different school facilities in the district, but then failing to videoconference the meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

**II.**

**FINDINGS OF FACT**

The Board noticed a public meeting for April 25, 2006, at the Silver Peak Elementary School. On the agenda it stated, "regular meetings will be on Video Conference at each school site in the District, unless there is a conflict with an educational program or class, and providing there are no technical difficulties." The Board traditionally videoconferences the meeting to the other school sites, in this case the Goldfield Elementary School and Dyer Elementary School. According to Superintendent Jordan, the meeting was not a regularly scheduled meeting but a rescheduled meeting noticed pursuant to the Open Meeting Law.



1 Mr. Jordan further indicated, "the information regarding the rescheduled date did not reach  
2 our Video Conference Coordinator in time for rescheduling." As a result, the meeting was not  
3 videoconferenced to the Dyer location.

4 The members of the general public at the Dyer location requested that the Chair delay  
5 the meeting to allow them to drive to the Silver Peak location, which takes approximately 30-  
6 45 minutes according to Ms. Harrison. The audiotapes of the meeting and Mr. Jordan's  
7 response to the complaint indicated that the meeting began at 6:22 p.m., which was 22  
8 minutes after the scheduled start time.<sup>1</sup> Further, the guest list indicates that 8 of 10 Dyer  
9 residents who appeared at the Dyer location attended the Silver Peak meeting. Their arrival  
10 times are unknown. However, the issue of the delayed start is irrelevant. The issue, for  
11 purposes of the Open Meeting Law, is the issue stated below.

12 III.  
13 ISSUE

14 Did the Board violate the Open Meeting Law by noticing the meeting to be  
15 videoconferenced to the Dyer location but failing to videoconference the meeting to that  
16 location?

17 IV.  
18 CONCLUSIONS OF LAW

19 NRS 241.020, in pertinent part, states:

- 20 2. Except in an emergency, written notice of all meetings must be  
21 given at least 3 working days before the meeting. The notice must  
22 include:  
(a) The time, place and location of the meeting.

23 In § 5.05 of the NEVADA OPEN MEETING LAW MANUAL, this office stated that nothing in the Open  
24 Meeting Law prohibits a public body from meeting via videoconference, "however, since this is  
25 a 'meeting,' the *notice requirements* of the Open Meeting Law must be complied with and the  
26 public must have an opportunity to listen to the discussions and votes by all the members

27 \_\_\_\_\_  
28 <sup>1</sup> This office has a policy of accepting the word of public officers with regard to Open Meeting Law investigations. Thus, this office accepts that the meeting began at 6:22 p.m.

1 such as through a speaker phone or other device.” NEVADA OPEN MEETING LAW MANUAL, §  
2 5.05 at 33 (10th ed. 2005) (Emphasis added).

3 In this case, the public notice clearly noticed Silver Peak Elementary School as the  
4 place and location of the meeting. However, if the meeting was a “regular meeting” and there  
5 was no conflict with another scheduled event, the meeting would also be videoconferenced to  
6 the other school sites. In effect, the Board was noticing these sites as other locations for the  
7 meeting as well. The general public has a right to rely upon the agendas posted by a public  
8 body and must be able to rely on the noticed locations of the meeting. This reasoning is  
9 consistent with § 5.05 of the NEVADA OPEN MEETING LAW MANUAL. This office realizes that §  
10 5.05 of the NEVADA OPEN MEETING LAW MANUAL contemplates the members of the public  
11 bodies being in different locations. However, if a public body notices a meeting to be  
12 videoconferenced to different locations, the public body must attempt to videoconference the  
13 meeting. The Board failed to videoconference the meeting to the Dyer location and not as a  
14 result of any technical difficulty or conflict. As such, this office finds that the Board violated  
15 the Open Meeting Law by failing accurately to notice the locations of meetings as required by  
16 NRS 241.020(2)(a).

17 Further, the language of the notice regarding videoconferencing is ambiguous. Here,  
18 the agenda does not indicate, in any way, that the meeting is a rescheduled meeting, which  
19 may or may not make the meeting a “regular” meeting. Furthermore the public has no way of  
20 knowing from the agenda whether the meeting is a regular meeting or a special meeting. In  
21 fact, members of the public would not be able to determine whether the Board is  
22 videoconferencing a meeting until they arrived at one of the remote locations and found out  
23 the status of the meeting or the availability of the room. This activity violates the spirit of the  
24 Open Meeting Law.

25 This office also finds the Board’s explanation that the information did not reach the  
26 Video Conference Coordinator in time, to be an inadequate justification for failing to  
27 videoconference the meeting. If the Board could post a notice three days prior to the  
28

1 meeting, it should have been able to inform the Video Conference Coordinator in a timely  
2 fashion.

3 This office recommends that the Board and its staff take appropriate measures to  
4 implement a consistent practice regarding videoconferencing and to indicate accurately and  
5 unequivocally on the agenda whether or not these meetings will be videoconferenced. The  
6 current language is too ambiguous. Since this office has not found a recent violation of the  
7 Open Meeting Law by the Board, this office will not proceed with litigation at this time.

8 V.

9 CONCLUSION

10 The Board of Trustees of the Esmeralda County School District violated the Open  
11 Meeting Law by noticing that a meeting would be videoconferenced to different locations in  
12 Esmeralda County, and then failing to videoconference the meeting to those locations. The  
13 Office of the Nevada Attorney General trusts and expects the Board of Trustees of the  
14 Esmeralda County School District to act in a manner consistent with this opinion. Failure to  
15 do so may result in litigation.

16 DATED this 31<sup>st</sup> day of July 2006.

17 GEORGE J. CHANOS  
18 Attorney General

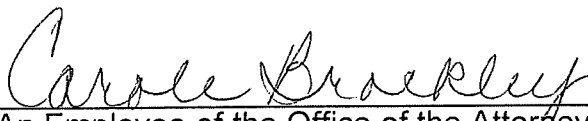
19  
20 By: Neil A. Rombaro  
21 NEIL A. ROMBARDO  
22 Senior Deputy Attorney General  
23 Nevada State Bar No. 6800  
24 100 North Carson Street  
25 Carson City, Nevada 89701-4717  
26 (775) 684-1205

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 1st day of August 2006, I mailed a copy of the Findings of  
4 Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 SHERRY HARRISON  
6 POST OFFICE BOX 157  
7 DYER NV 89010

8 CURTIS L JORDAN  
9 SUPERINTENDENT  
10 ESMERALDA COUNTY SCHOOL DISTRICT  
11 POST OFFICE BOX 560  
12 GOLDFIELD NV 89013-0560

13   
14 An Employee of the Office of the Attorney General

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**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

In the Matter of:

Attorney General File No. 06-020

CITY OF LAS VEGAS BUILDING OFFICIAL'S  
HEARING COMMITTEE

I.

**INTRODUCTION**

In a letter received May 25, 2006, by the Office of the Nevada Attorney General, Gary W. Wright filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law, NRS Chapter 241. In particular, Mr. Wright alleges that the City of Las Vegas Building Official's Hearing Committee (Committee) continually violates the Open Meeting Law by failing to conduct its meetings pursuant to NRS Chapter 241.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, and supporting documents.

II.

**FINDINGS OF FACT**

In 2003, the City of Las Vegas adopted a different appeal procedure from what is found in the Uniform Building Code to appeal the decisions of building inspectors. This procedure is found in Las Vegas Ordinance Number 5637. It states that the Building Official's Hearing Committee shall decide these types of appeals. The Committee is made up of officers and employees of the Las Vegas Department of Building and Safety:

- The Director, a Deputy Director, or another designee.
- An Inspection Supervisor or the Supervisor's designee.

///

- The Plans Examination Supervisor or the Supervisor's designee.
- Additional inspectors or technical persons, at the Director's discretion.

This ordinance clearly states that the final decision maker is the Director, a Deputy Director, or his designee after consulting with the other members of the Committee. The Committee continually conducts "meetings" without complying with NRS Chapter 241.

III.

ISSUE

Does the Open Meeting Law apply to the Committee?

IV.

CONCLUSIONS OF LAW

NRS 241.015(3) defines "public body" as:

Except as otherwise provided in this subsection, "public body" means any administrative, advisory, executive or legislative body of the State or a local government which expends or disburses or is supported in whole or in part by tax revenue or which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue, including, but not limited to, any board, commission, committee, subcommittee or other subsidiary thereof and includes an educational foundation as defined in subsection 3 of NRS 388.750 and a university foundation as defined in subsection 3 of NRS 396.405. "Public body" does not include the Legislature of the State of Nevada.

This Office has opined that a further element of the term "public body" is that the body must be collegial in nature, which means it must be made up of more than one person and all members of the body must share equal voting power. See NEVADA OPEN MEETING LAW MANUAL, § 3.01, at 18 (10th ed. 2005).

In this instance, the final decision maker of the Committee is the Director, a Deputy Director, or his designee. Although the term "Committee" connotes a public body consisting of more than one member, in effect, the Committee meeting equates to the Director meeting with his staff members because he is the final decision maker.<sup>1</sup> Thus, the Committee is not a "public body" for purposes of the Open Meeting Law because the members do not share equal voting power.

<sup>1</sup> See NEVADA OPEN MEETING LAW MANUAL, § 3.01, at 18 (10<sup>th</sup> ed. 2005) for further discussion.

1 Since the Committee is not a "public body" pursuant to the Open Meeting Law, this  
2 Office lacks jurisdiction over this Committee pursuant to the Open Meeting Law. As a result,  
3 the Committee did not violate the Open Meeting Law.

4 V.

5 **CONCLUSION**

6 The Las Vegas Building Official's Hearing Committee is not a "public body" for  
7 purposes of the Open Meeting Law, and therefore, the Open Meeting Law does not apply to  
8 the Las Vegas Building Official's Committee meetings. Thus, at this time, the Office of the  
9 Nevada Attorney General is closing its file on this issue.

10 DATED this 24<sup>th</sup> day of August, 2006.

11 GEORGE J. CHANOS  
12 Attorney General

13  
14 By: Neil A. Rombardo  
15 NEIL A. ROMBARDO  
16 Senior Deputy Attorney General  
17 Nevada State Bar No. 6800  
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1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE

4 In the Matter of:

5  
6 THE BOARD OF TRUSTEES OF THE  
7 MINERAL COUNTY SCHOOL DISTRICT

Attorney General File No. 06-018 and  
06-021

8 I.

9 INTRODUCTION

10 In letters received April 26, 2006 and April 28, 2006 by the Office of the Nevada  
11 Attorney General, Leslie A. Banks, Sue Banks, Willow Phillips, and Donna Webster  
12 (Complainants) filed complaints with this Office alleging violations of the Nevada Open  
13 Meeting Law, NRS Chapter 241.<sup>1</sup> In particular, Complainants allege that The Board of  
14 Trustees of the Mineral County School District (Board) violated the Open Meeting Law at its  
15 April 10, 2006 and April 25, 2006 meetings by: (1) failing to notice Leslie A. Banks that the  
16 Board may consider her character, alleged misconduct, professional competence, or health;  
17 (2) failing to notice Mr. Cook, Superintendent of the Mineral County School District, that his  
18 letter of admonition would be considered; and (3) conducting serial communications and/or by  
19 taking action outside an open meeting.<sup>2</sup>

20 In a letter received June 2, 2006, by the Office of the Nevada Attorney General,  
21 Kenneth Chase filed a complaint with this Office alleging violations of the Nevada Open  
22

23 <sup>1</sup> Pursuant to this Office's Open Meeting Law procedures, the complaints were sent to Superintendent  
24 Cook for a response on the part of the Board. Superintendent Cook's response pointed out similar violations as  
those alleged. Therefore, in effect, his response was also treated as a complaint that will be addressed herein.

25 <sup>2</sup> The Complainants also complained about the Board's February 15, 2006, February 28, 2006, March 2,  
26 2006, and March 14, 2006 meetings. The statute of limitations to "void" an action taken in violation of the Open  
Meeting Law is 60 days. The statute of limitations to receive an "injunction" to prevent similar future Open  
27 Meeting Law violations is 120 days. NRS 241.036. With regard to these meetings, the Complainants filed their  
complaints after the 60-day statute of limitations, and the 120-day statute of limitations has also expired as well.  
28 As a policy, if the statute of limitations has expired, this Office does not opine upon potential Open Meeting Law  
violations that may have occurred at those meetings. However, with regard to issue A, this office will discuss the  
past meetings for foundational purposes, and because it is alleged that the Board continues to commit related on-  
going Open Meeting Law violations with regard to that particular issue, this office will opine upon those meetings  
for the sake of clarity.

1 Meeting Law, NRS Chapter 241. In particular, Mr. Chase alleges that the Board violated the  
2 Open Meeting Law at its April 25, 2006 meeting by failing to notice him that the Board may  
3 consider his character, alleged misconduct, professional competence, or health.<sup>3</sup>

4 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
5 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
6 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
7 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
8 and audiotape recordings.

9 II.

10 FINDINGS OF FACT

11 On February 15, 2006, the Board conducted an open meeting. An item on the agenda  
12 for that meeting was "Discussion and appropriate action to eliminate the Part-time  
13 Bookkeeper position and to combine the Part-time Bookkeeper and Executive Secretary  
14 positions, to include the salary for the above mentioned position." The Board tabled this item  
15 until the next meeting because it did not want to eliminate the Part-time Bookkeeper position;  
16 the Board wanted to simply combine the two positions, and the Board felt the agenda did not  
17 allow for such action.

18 On February 28, 2006, the Board considered the tabled item. During that meeting, the  
19 Board passed a motion to combine the two positions.

20 On March 14, 2006, the Board deliberated and took action on agenda item 6, which  
21 stated, in pertinent part, "Discussion and appropriate action on designation of following staff  
22 positions as confidential classified or classified: . . . Executive Secretary."

23 On April 25, 2006, while discussing the minutes of the April 10, 2006 meeting, Mr.  
24 Palmer mentioned that Ms. Banks, the Executive Secretary, drafted the minutes. Trustee  
25 Haak stated she did not like the way the minutes had been drafted. She felt as if her  
26 comments were misrepresented by the minutes.

27 \_\_\_\_\_  
28 <sup>3</sup> Mr. Chase's complaint was assigned AG File No. 06-021. However, since the facts and circumstances  
are the same as, or similar to, AG File No. 06-018, this Office is drafting this single opinion for both AG File Nos.  
06-018 and 06-021. This complaint is issue D of this opinion.

1 Ms. Banks is the Executive Secretary. Ms. Banks filed a complaint with this Office  
2 alleging a violation of the Open Meeting Law because she was not personally noticed of any  
3 of these meetings pursuant to NRS 241.033. However, at no time during the meetings did the  
4 Board discuss the character, alleged misconduct, professional competence, or health of Ms.  
5 Banks.

6 On March 2, 2006, the Board conducted an open meeting to consider the character,  
7 alleged misconduct, professional competence, or health of Superintendent Cook. Mr. Cook  
8 admits that he was properly noticed of this meeting. At the meeting, the Board took action to  
9 authorize a letter of admonition to Superintendent Cook regarding his alleged misconduct,  
10 and the Board attorney was to prepare the letter.

11 Subsequent to the meeting, the Board attorney prepared the letter. Chairman  
12 Schumann did not approve of the letter prepared by the Board's attorney and changed the  
13 letter. He then took the amended letter to other members of the Board to solicit and obtain  
14 three trustees' signatures; there are five members on the Board. Trustee Chase told  
15 Chairman Schumann that he would not sign the letter because he felt Chairman Schumann  
16 was violating the Open Meeting Law by obtaining the signatures.

17 On April 10, 2006, Chairman Schumann placed the letter of admonition as to the  
18 Superintendent on the agenda. During that item of the agenda, he publicly disclosed that he  
19 obtained three signatures from other trustees outside a meeting of the Board and that, if he  
20 violated the Open Meeting Law, he did not intend to do so. The matter was tabled and  
21 reconsidered at the April 25, 2006 meeting, at which time the Board approved the letter of  
22 admonition. During both of these meetings, the Board did not reconsider Superintendent  
23 Cook's performance or accept new information. Both meetings only related to the Board's  
24 approval of the letter of admonition.

25 Also, at the April 25, 2006 meeting, Trustee Chase left the meeting prior to public  
26 comment. During the public comment portion of the meeting, Mr. Richard Bishop, a member  
27 of the public, read a letter into the record referring to the incident with Chairman Schumann.  
28 As a part of that letter, Mr. Bishop stated that trustees should not accuse other trustees of

1 Open Meeting Law violations as well as other references to Mr. Chase. Mr. Chase filed a  
2 complaint with this Office alleging that the Board considered his character, alleged  
3 misconduct, professional competence, or health without providing personal notice to Trustee  
4 Chase.

5 **III.**

6 **ISSUE**

7 A. Did the Board violate the Open Meeting Law by failing to personally notice Ms.  
8 Banks that it was discussing her position?

9 B. Did the Board violate the Open Meeting Law by failing to personally notice  
10 Superintendent Cook of the April 10, 2005 and April 25, 2005 meetings?

11 C. Did Chairman Schumann violate the Open Meeting Law by obtaining the  
12 signatures of other trustees on the letter of admonition outside of an open meeting?

13 D. Did the Board violate the Open Meeting Law by permitting Mr. Bishop to make  
14 reference to Trustee Chase, during the public comment period, without personally noticing  
15 Trustee Chase?

16 **IV.**

17 **CONCLUSIONS OF LAW**

18 A. Did the Board violate the Open Meeting Law by failing to personally notice Ms.  
19 Banks that it was discussing her position?

20 NRS 241.033(1) and (7) state:

21 1. A public body shall not hold a meeting to consider the  
22 character, alleged misconduct, professional competence, or  
23 physical or mental health of any person or to consider an appeal  
by a person of the results of an examination conducted by or on  
behalf of the public body unless it has:

- 24 (a) Given written notice to that person of the time and place of  
the meeting; and  
25 (b) Received proof of service of the notice.

26 7. For the purposes of this section, casual or tangential  
27 references to a person or the name of a person during a closed  
meeting do not constitute consideration of the character, alleged  
28 misconduct, professional competence, or physical or mental  
health of the person.

1 This Office has consistently opined that the mere mention of a person does not require that  
2 the person be personally noticed of the meeting. See NEVADA OPEN MEETING LAW MANUAL,  
3 §6.09, AT 49 (10<sup>th</sup> ed. 2005) citing OMLO 2004-14 (April 20, 2004); OMLO 2003-18 (April 21,  
4 2003); and OMLO 2003-28 (November 14, 2003).

5 Here, in February of 2006, the Board deliberated and took action over consolidating  
6 the Part-time Bookkeeper position and the Executive Secretary position. At the March 14,  
7 2006 meeting, the Board deliberated and took action on whether the Executive Secretary  
8 position should be a classified or confidential classified position, and at the April 25, 2006  
9 meeting, the Board briefly discussed the April 10, 2006 meeting's minutes, which Ms. Banks,  
10 the Executive Secretary, happened to draft. In all of these instances, the objective of the  
11 Board was not to consider the "character, alleged misconduct, professional competence, or  
12 health" of Ms. Banks. Instead, the Board was making personnel decisions related to job  
13 duties and classifications and/or discussing whether to approve the minutes as written. Any  
14 mention of Ms. Banks was merely tangential to the actual issue, and as a result, the Board  
15 was not obligated to notice Ms. Banks of the meetings and did not violate the Open Meeting  
16 Law.

17 B. Did the Board violate the Open Meeting Law by failing to personally notice  
18 Superintendent Cook of the April 10, 2006 and April 25, 2006 meetings?

19 The pertinent law relevant to this matter is the same as stated above in issue A.

20 At the April 10, 2006 and April 25, 2006 meetings, the Board deliberated and took  
21 action on the letter of admonition for Superintendent Cook. The Board voted to send a letter  
22 of admonition to Superintendent Cook at its March 2, 2006 meeting after properly noticing  
23 Superintendent Cook. At no time during the April meetings did the Board consider the  
24 "character, alleged misconduct, professional competence, or health" of Superintendent Cook.  
25 The sole purpose of the meetings was the approval of the letter of admonition. Thus NRS  
26 241.033 did not obligate the Board to notice Superintendent Cook of those meetings, and the  
27 Board did not violate the Open Meeting Law.

28 ///

1 C. Did Chairman Schumann violate the Open Meeting Law by obtaining the  
2 signatures of other trustees on the letter of admonition outside of an open meeting?

3 NRS 241.010 states:

4 In enacting this Chapter, the Legislature finds and declares that all  
5 public bodies exist to aid in the conduct of the people's business. It  
6 is the intent of the law that their actions be taken openly and that  
7 their deliberations be conducted openly.

8 NRS 241.015(1)(a) and (b) define "action" as:

9 (a) A decision made by a majority of the members present during  
10 a meeting of a public body;

11 (b) A commitment or promise made by a majority of the members  
12 present during a meeting of a public body;

13 NRS 241.015(2), in pertinent part, defines "meeting" as:

14 2. "Meeting":

15 (a) Except as otherwise provided in paragraph (b), means:

16 (1) The gathering of members of a public body at which a  
17 quorum is present to deliberate toward a decision or to take action  
18 on any matter over which the public body has supervision, control,  
19 jurisdiction or advisory power.

20 (2) Any series of gatherings of members of a public body at  
21 which:

22 (I) Less than a quorum is present at any individual gathering;

23 (II) The members of the public body attending one or more of the  
24 gatherings collectively constitute a quorum; and

25 (III) The series of gatherings was held with the specific intent to  
26 avoid the provisions of this Chapter.

27 During the March 2, 2006 meeting, the Board approved a letter of admonition to be  
28 drafted by the Board's attorney. The motion is unclear whether the final letter of admonition  
would be returned for final Board approval. However, by unilaterally changing the letter,  
Chairman Schumann exceeded the action taken at the March 2, 2006 meeting of simply  
obtaining signatures as a mere affirmation of the action to send the letter. In effect, this was  
a new action on a different letter. NRS 241.010 requires all "actions" of a public body to occur  
in an open meeting. Chairman Schumann obtained a decision or received a consensus of  
the Board by receiving three out of five signatures, which is an action pursuant to  
NRS 241.015(1)(a). Chairman Schumann did this outside of an open meeting. In effect, this  
is a perfect example of "serial communications" as defined in NRS 241.015(2)(a)(2) and thus,  
a violation of the Open Meeting Law.

1           However, Chairman Schumann disclosed his violation in an open meeting, which  
2 mitigates the violation. Further, the Board took action on the letter of admonition in an open  
3 meeting on April 25, 2006, which further cures the violation. As a result, at this time, this  
4 Office will not pursue legal action against the Board, but advises the Board and its members  
5 to avoid serial communication as defined above in NRS 241.015(2)(a)(2) and NEVADA OPEN  
6 MEETING LAW MANUAL, §5.08, at 34-37 (10<sup>th</sup> ed. 2005).

7           D.       Did the Board violate the Open Meeting Law by permitting Mr. Bishop to make  
8 reference to Trustee Chase, during the public comment period, without personally noticing  
9 Trustee Chase?

10           According to NRS 241.033, a public body must personally notice someone of a  
11 meeting if that meeting is held to consider the "character, alleged misconduct, professional  
12 competence, or health" of a person. This Office previously opined that it will consider the  
13 actual discussion at a meeting to determine whether notice is required pursuant to NRS  
14 241.033. See OMLO 2002-24 (May 28, 2003). In doing so, this Office will look to see if the  
15 public body considered, deliberated over, or thought seriously about the person's "character,  
16 alleged misconduct, professional competence, or physical or mental health." See *generally*  
17 OMLO 2002-34 (August 2, 2002).

18           Here the comments at issue were made by a member of the general public. The  
19 Board cannot be expected to control the comments of a member of the general public, nor  
20 can the Board be held responsible for knowing what a member of the public may say about a  
21 person during the public comment period of a meeting. Further, in this circumstance, the  
22 Board did not consider the "character, alleged misconduct, professional competence, or  
23 health" of Trustee Chase. Instead, the Board merely heard the comments of a member of the  
24 general public, Mr. Bishop, which tangentially related to Trustee Chase. Thus the Board did  
25 not violate the Open Meeting Law by permitting Mr. Bishop to make reference to Trustee  
26 Chase.

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V.

**CONCLUSION**

The Board of Trustees of the Mineral County School District did not violate the Open Meeting Law by failing to personally notice, pursuant to NRS 241.033, either Ms. Banks, Superintendent Cook, or Trustee Chase. The Board of Trustees of the Mineral County School District, in particular Chairman Schumann, violated the Open Meeting Law by taking action on an item through serial communications. The Office of the Nevada Attorney General warns that future similar actions may result in litigation, but at this time, because of the disclosure of Chairman Schumann and the vote taken in a subsequent meeting approving the letter, the Office of the Nevada Attorney General will not pursue legal action. Thus, the Office of the Nevada Attorney General is closing its file on this issue at this time.

DATED this 17<sup>th</sup> day of August 2006.

GEORGE J. CHANOS  
Attorney General

By:   
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205



1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 18<sup>th</sup> day of August 2006, I mailed a copy of the Findings of Fact  
4 and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Kenneth W. Chase  
6 Box 545  
7 Hawthorne, NV 89415

8 Leslie A. Banks  
9 P.O. Box 1665  
10 Hawthorne, NV 89415

11 Willow Phillips  
12 P.O. Box 566  
13 Hawthorne, NV 89415

14 Sue Banks  
15 P.O. Box 976  
16 Hawthorne, NV 89415

17 Donna J. Webster  
18 P.O. Box 496  
19 Hawthorne, NV 89415

20 James T. Winkler, Esq.  
21 Littler Mendelson  
22 3960 Howard Hughes Parkway  
23 Suite 300  
24 Las Vegas, NV 89109

25   
26 An Employee of the Office of the Attorney General  
27  
28



1 During the meeting, it was alleged that the members of the general public did not  
2 receive the support material in a timely fashion. In fact, the Board's legal counsel admitted in  
3 her correspondence that the Board had difficulty providing support material at the meeting  
4 because of the large demand. However, Ms. Gray alleges that she was unable to pick up her  
5 support material on May 16, 2006, the day before the meeting, although the support material  
6 had already been provided to the members of the Board.

7 **III.**

8 **ISSUE**

9 1. Did the Board violate the Open Meeting Law by placing an incomplete and  
10 unclear agenda statement, in particular item #5, on the agenda?

11 2. Did the Board violate the Open Meeting Law by failing to provide members of  
12 the general public with the support material in a timely fashion?

13 **IV.**

14 **CONCLUSIONS OF LAW**

15 Before analyzing the potential violations, it must be determined whether the Open  
16 Meeting Law applies to a meeting conducted pursuant to NRS 386.365.

17 It is not disputed that the Board is a public body pursuant to NRS 241.015(3).  
18 NRS 241.020(1), in pertinent part, states, "Except as otherwise provided by specific statute,  
19 all meetings of public bodies must be open and public, and all persons must be permitted to  
20 attend any meeting of these public bodies." NRS 241.015(2)(a)(1) defines "Meeting" as "The  
21 gathering of members of a public body at which a quorum is present to deliberate toward a  
22 decision or to take action on any matter over which the public body has supervision, control,  
23 jurisdiction, or advisory power." NRS 386.365 permits a board of trustees in a county having  
24 a population over 100,000 to adopt, repeal, or amend a policy or regulation of the board. It  
25 also requires a 15-day notice of intention to adopt, repeal, or amend such a policy or  
26 regulation.

27 Here, a quorum of the Board gathered to deliberate toward adopting, repealing, or  
28 amending Board policies and/or regulations. This Office has always opined that a meeting by

1 a public body to adopt a regulation pursuant to NRS Chapter 233B must comply with the  
2 Open Meeting Law. See NEVADA OPEN MEETING LAW MANUAL, § 13.02, at 81 (10<sup>th</sup> ed. 2005).  
3 Similarly, a meeting held pursuant to NRS 386.365 by a board of trustees to adopt, repeal or  
4 amend board policies or regulations must also comply with the Open Meeting Law because it  
5 meets the elements of the definition of a "Meeting" found in NRS 241.015(2)(a)(1).<sup>1</sup>

6 1. *Did the Board violate the Open Meeting Law by placing an incomplete and*  
7 *unclear agenda statement, in particular item #5, on the agenda?*

8 NRS 241.020(2)(c)(1) requires a public body to post a public notice that contains "[a]n  
9 agenda consisting of a clear and complete agenda statement of the topics scheduled to be  
10 considered during the meeting." In *Sandoval v. Board of Regents*, 119 Nev. 148, 155, 67  
11 P.3d 902, 906 (2003) the Supreme Court stated, "Nevada's Open Meeting Law seeks to give  
12 the public clear notice of the topics to be discussed at public meetings so that the public can  
13 attend a meeting when an issue of interest will be discussed." "Agenda descriptions for  
14 resolutions, ordinances, regulations, statutes, rules or other such items . . . should describe  
15 what the statute, ordinance, regulation, resolution, or rule related to so that the public may  
16 determine if it is a subject in which they have an interest." See NEVADA OPEN MEETING LAW  
17 MANUAL, § 7.02, at 56 (10th ed. 2005) citing OMLO 99-01 (January 5, 1999) and OMLO 99-03  
18 (January 11, 1999).

19 Here, the agenda statement for noticed agenda item #5 is quite lengthy. However, the  
20 agenda item states the rule or regulation number and a short title or statement with regard to  
21 what the rule or regulation relates to. Although the agenda item is quite lengthy, this Office  
22 believes that agenda item #5 does not create confusion nor does it lack clarity. This Office  
23

24 \_\_\_\_\_  
25 <sup>1</sup> It has come to the attention of this office through an interview with the complainant that the Board only  
26 permits public comments on noticed agenda items during a meeting held pursuant to NRS 386.365. (The agenda  
27 seems to confirm this statement.) This office has always opined that if a public body conducts a single public  
28 comment period, it must permit the members of the public to comment on both noticed agenda items and non-  
noticed agenda items. See NEVADA OPEN MEETING LAW MANUAL, §7.04, at 58 (10th ed. 2005). Therefore, the  
Board violated the Open Meeting Law by limiting public comment to only noticed agenda items. However,  
because the agenda items from the May 17, 2006 meeting were discussed at multiple subsequent meetings, this  
office will not consider litigation at this time. However, this office advises the Board to change its policies with  
regard to limiting public comment to noticed agenda items during a meeting held pursuant to NRS 386.365.

1 finds that the Board did not violate the Open Meeting Law with regard to the wording of  
2 agenda item #5.

3 2. *Did the Board violate the Open Meeting Law by failing to provide members of*  
4 *the general public with the support material in a timely fashion?*

5 In 2005, the Legislature adopted the long-standing view of this Office that a public  
6 body must provide support material to the general public at the same time it is made available  
7 to the members of the public body. See NRS 241.020(6)(a) and (b). See *also* NEVADA OPEN  
8 MEETING LAW MANUAL, §6.06, at 43-44 (10<sup>th</sup> ed. 2005).

9 In this instance, the audiotapes indicate that the members of the public body received  
10 their support material a few days prior to the meeting. On the day before the meeting, staff  
11 for the Board was unable to provide the support material to Ms. Gray. Therefore, the Board  
12 violated the Open Meeting Law.

13 Although the Board violated the Open Meeting Law by being unable to provide support  
14 material in a timely fashion, the Board has considered the same rules and regulations from  
15 the May 17, 2006 meeting several times in subsequent open public meetings. The record  
16 indicates that these meetings complied with all aspects of the Open Meeting Law. Thus, any  
17 harm for the previous violation has been cured by the Board's subsequent meetings. This  
18 Office advises the Board to comply with NRS 241.020(6)(a) and (b), but will not pursue  
19 litigation against the Board at this time.

20 V.


21 CONCLUSION

22 The Board of Trustees of the Clark County School District did not violate the Open  
23 Meeting Law by placing an agenda statement on the agenda that was unclear and/or  
24 incomplete. However, the Board of Trustees of the Clark County School District did violate  
25 the Open Meeting Law by failing to provide support material in a timely manner and by failing  
26 to allow for public comment on non-noticed agenda items. However, the subsequent  
27 meetings conducted by the Board of Trustees of the Clark County School District cured these  
28 violations because it considered, deliberated, and took action on the rules and regulations in

1 question during open, public meetings that complied with all aspects of the Open Meeting  
2 Law. Therefore, the Office of the Nevada Attorney General will not pursue litigation at this  
3 time.

4 DATED this 24<sup>th</sup> day of August, 2006.

5 GEORGE J. CHANOS  
6 Attorney General

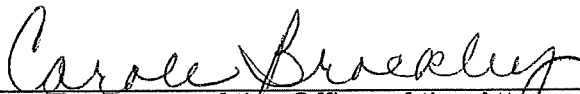
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1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 24<sup>th</sup> day of August, 2006, I mailed a copy of the Findings of Fact  
4 and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Karen R. Gray  
6 640 Burton Street  
7 Henderson, NV 89015

8 Mary-Anne Miller  
9 Clark County Counsel  
10 Office of the District Attorney  
11 P.O. Box 552215  
12 Las Vegas, NV 89155-2215

13   
14 An Employee of the Office of the Attorney General  
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STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
NEVADA DEPARTMENT OF JUSTICE

In the Matter of:

CARSON CITY REDEVELOPMENT  
AUTHORITY

Attorney General File No. 06-023

I.

**INTRODUCTION**

In a letter received June 15, 2006 by the Office of the Nevada Attorney General, Mr. Sam Dehné filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law, NRS Chapter 241. In particular, Mr. Dehné alleged that the Carson City Redevelopment Authority (Authority) violated the Open Meeting Law at its June 1, 2006 meeting by failing to allow public comments on non-agenda items. The complaint stated that the violations were not corrected at the June 15, 2006 meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and videotape recordings.

II.

**FINDINGS OF FACT**

On June 1, 2006, the Authority conducted a properly noticed meeting as part of an agenda entitled "CARSON CITY CONSOLIDATED MUNICIPALITY NOTICE OF MEETING OF THE CARSON CITY BOARD OF SUPERVISORS AND CARSON CITY REDEVELOPMENT AUTHORITY." The agenda listed five unnumbered items, including a "Call to Order," a "Roll Call," an "Invocation," a "Pledge of Allegiance," and "Citizen Comments



1 on Non-Agenda Items.” The agenda then moved into numbered items, beginning with “1.  
2 Action on Approval of Minutes.”

3 After completing the Pledge of Allegiance, the Chairman called for any citizen  
4 comments on non-agenda items, and, with none forthcoming, moved to item number one on  
5 the agenda. The first several items on the agenda were for consideration by the Carson City  
6 Board of Supervisors (Board), and the Board moved through those agenda items with  
7 Mayor Marv Texeira acting as Chair, including removing items 10 (B) and (C), and acting upon  
8 items 10 (E), (F), and (D). The Board then recessed and the group reconvened as the Carson  
9 City Redevelopment Authority (Authority), with Supervisor Robin Williamson acting as Chair.  
10 After hearing testimony on item 10(A), a motion to approve the item came from Supervisor  
11 Richard Staub, was seconded, and public comment asked for. At this point, Mr. Dehné  
12 commented that the Authority had failed to provide a public comment on non-agenda items as  
13 required by the Open Meeting Law. Mayor Texeira explained that the public comment section  
14 at the beginning of the meeting was intended to cover the entire agenda, and that they would  
15 take his comments under consideration. Mr. Dehné questioned whether that consideration  
16 would take place during this meeting and the Mayor responded that it would not. The  
17 Authority approved item 10 (A), recessed, and the Board reconvened with Mayor Texeira as  
18 Chair.

19 Mr. Dehné remained at the meeting after the above request and commented on several  
20 other agenda items before the Board, including items 14 (A), (B) and (C).

21 On June 15, 2006, the Authority conducted a properly noticed meeting as part of an  
22 agenda entitled “CARSON CITY CONSOLIDATED MUNICIPALITY NOTICE OF MEETING  
23 OF THE CARSON CITY BOARD OF SUPERVISORS AND CARSON CITY LIQUOR AND  
24 ENTERTAINMENT BOARD AND CARSON CITY REDEVELOPMENT AUTHORITY.” The  
25 agenda listed five unnumbered items, including a “Call to Order,” a “Roll Call,” an “Invocation,”  
26 a “Pledge of Allegiance,” and “Citizen Comments on Non-Agenda Items.” The agenda then  
27 moved into numbered items, beginning with “1. Action on Approval of Minutes.”  
28

1 After completing the Pledge of Allegiance, the Chairman called for any citizen  
2 comments on non-agenda items. Mr. Dehné spoke regarding his opinion that the agenda for  
3 the meeting did not comply with the requirements of the Open Meeting Law, as each of the  
4 various agencies' sections of the agenda did not contain an allowance for the required public  
5 comment on non-agenda items. Mr. Dehné stated that he informed the Board of this problem  
6 at its last meeting and he would therefore be filing an Open Meeting Law complaint with the  
7 Attorney General's Office. Mr. Dehné indicated that he would not file the complaint if the  
8 Board would add a section to the agendas of the Liquor Board and the Redevelopment  
9 Authority immediately. Chairman Teixeira indicated that they could not make such an addition  
10 without violating the Open Meeting Law, and no action was taken on this request.

11 III.

12 ISSUE

13 1. Does the Open Meeting Law require that a public comment section for non-agenda  
14 items be contained for each individual public body meeting under a multi-body public notice of  
15 meeting?

16 IV.

17 CONCLUSIONS OF LAW

18  
19 NRS 241.020(1) provides, in pertinent part, that "[e]xcept as otherwise provided by  
20 specific statute, all meetings of public bodies must be open and public, and all persons must  
21 be permitted to attend any meeting of these public bodies." NRS 241.020(2)(c)(3) provides  
22 that the agenda must have a period devoted to comments by the general public. "[T]he  
23 purpose of the agenda is to give the public notice of what its government is doing, has done,  
24 or may do." NEVADA OPEN MEETING LAW MANUAL, § 7.02, at 55 (10<sup>th</sup> ed. 2005). In determining  
25 whether an agenda statement complies with the "clear and complete" standard, the courts will  
26 look to see if the agenda statement gives "the public clear notice of the topics to be discussed  
27 at public meetings so that the public can attend a meeting when an issue of interest will be  
28 discussed." *Sandoval v. Board of Regents*, 119 Nev. 148, 155, 67 P.3d 902, 906 (2003).

1 Except during the public comment period required by NRS 241.020(2)(c)(3), the Open  
2 Meeting Law does not mandate that members of the public be allowed to speak during  
3 meetings. The Open Meeting Law does not require that public comment be allowed regarding  
4 agenda items other than during the public comment period. However, a public body cannot  
5 restrict the public comment section of the agenda to non-agenda items unless the public is  
6 allowed to comment on any subject within the authority of the public body. NEVADA OPEN  
7 MEETING LAW, § 8.04, at 61 (10<sup>th</sup> ed. 2005). Thus, the ability of the public to speak on agenda  
8 items as well as non-agenda items must be denoted on an agenda. Simply placing a "public  
9 comments" item on the agenda would satisfy this requirement. The question in this case is  
10 whether the agendas at issue are clear and complete regarding public comment on  
11 non-agenda items.

12 The agendas at issue contain a period for comments by the general public on  
13 non-agenda items at the beginning of the meeting. Mr. Dehné argues that the public  
14 comment period afforded is insufficient, as each individual public body meeting under the  
15 agenda does not allow public comment. The Office of the Attorney General believes that any  
16 practice or policy that discourages or prevents public comment, even if technically in  
17 compliance with the law, may violate the spirit of the Open Meeting Law. See OMLO 99-11  
18 (August 26, 1999). The Board's agendas are technically compliant with the Open Meeting  
19 Law, but the lack of specificity in the language used may discourage or prevent public  
20 comment, as an individual might not fully understand that there is only one period provided for  
21 public comment on non-agenda items, despite the fact that various public bodies are meeting  
22 pursuant to the agenda.

23 The Board provided a copy of its July 20, 2006 agenda to the Attorney General. In that  
24 agenda, there is additional language indicating that the "Public Comments and Discussion"  
25 section is for comments on non-agenda items to be directed to the Board, the Authority, and  
26 the Carson City Liquor and Entertainment Board. Although not technically required by the  
27 Open Meeting Law, this additional language removes any danger of discouragement or  
28 prevention of public comment due to a misunderstanding of the public comment period to be

1 provided. This additional language makes the agenda more clear and complete. Therefore, it  
2 is the opinion of the Office of the Attorney General that this additional language should remain  
3 in future Board agendas, and similar language should be used in similar circumstances by  
4 other public bodies.

5 V.

6 CONCLUSION

7 The Carson City Redevelopment Authority did not violate the Open Meeting Law  
8 regarding opportunities for public comment on non-agenda items in its agendas for  
9 June 1, 2006 and June 15, 2006. The Authority remedied any confusion resulting from the  
10 language used in those agendas with its additional language added in its July 20, 2006  
11 agenda. In addition, public bodies that specify on their agendas that the public may comment  
12 on non-agenda items must also indicate that the public is allowed comment on any subject  
13 within the authority of the public body. As a result, the Office of the Nevada Attorney General  
14 is closing its file on this issue at this time.

15 DATED this 1<sup>st</sup> day of October, 2006.

16 GEORGE J. CHANOS  
17 Attorney General

18 By: 

19 DAVID W. NEWTON  
20 Deputy Attorney General  
21 Nevada State Bar No. 7843  
22 555 E. Washington, Suite 3900  
23 Las Vegas, NV 89101  
24 702-486-3898



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**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

In the Matter of:

Attorney General File No. 06-024

CHURCHILL COUNTY COMMISSIONERS

I.

**INTRODUCTION**

In a letter received June 13, 2006 by the Office of the Nevada Attorney General, Albert Raney filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law, NRS Chapter 241. In particular, Mr. Raney alleges that the Churchill County Commissioners (Commission) violated the Open Meeting Law at its June 7, 2006 meeting by making participants take an oath before commenting to the Board, and by failing to provide a clear and complete notice of an item on appeal.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.<sup>1</sup>

II.

**FINDINGS OF FACT**

On June 7, 2006, the Commission conducted a special meeting to consider a development project in Churchill County. On the agenda were two items related to the development project. The first item was noticed as a discussion and action item on an application for an industrial planned unit development. The application was made by Great

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<sup>1</sup> The audiotape recordings provided by the Commission were inaudible. However, the minutes and supporting documents provide enough information for this Office to opine on this issue.

1 Basin Industrial Park and Matthews Ranch Planned Unit Development. The item also stated  
2 the location of the property and the appropriate Assessor's Parcel Numbers (APN) for the  
3 property at issue. The second item on the agenda, and clearly listed as an action item, was  
4 an appeal of a Planning Commission decision made on May 10, 2006. The item stated:

5 AN APPEAL OF A DECISION MADE BY THE CHURCHILL  
6 COUNTY PLANNING COMMISSION on May 10, 2006 regarding  
7 approval of a Special Use Permit for an increase from 5%  
(Churchill County Code requirement) to 18% of the gross acreage  
for residential use.

8 The agenda statement did not use the term "hearing," although the Chairman of the  
9 Commission called the appeal a "hearing."

10 During the meeting, the Commission requested that members of the public, who  
11 addressed the Commission during the public comment period on the agenda items, take an  
12 oath. However, the Commission did not require the representatives of the development for  
13 the project to take a similar oath.

14 III.

15 ISSUE

16 1. Did the Commission violate the Open Meeting Law by failing to provide clear  
17 and complete notice of the item being considered?

18 2. Did the Commission violate the Open Meeting Law by requesting that members  
19 of the public take an oath before making their public comments?

20 IV.

21 CONCLUSIONS OF LAW

22 1. *Did the Commission violate the Open Meeting Law by failing to provide clear*  
23 *and complete notice of the item being considered?*

24 NRS 241.020(2) states:

25 Except in an emergency, written notice of all meetings must be  
26 given at least 3 working days before the meeting. The notice must  
include:

- 27 (a) The time, place and location of the meeting.  
28 (b) A list of the locations where the notice has been posted.  
(c) An agenda consisting of:

- (1) A clear and complete statement of the topics scheduled to be considered during the meeting.
- (2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items.
- (3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

“[T]he purpose of the agenda is to give the public notice of what its government is doing, has done, or may do.” NEVADA OPEN MEETING LAW MANUAL, § 7.02, at 55 (10<sup>th</sup> ed. 2005). In determining whether an agenda statement complies with the “clear and complete” standard, the courts will look to see if the agenda statement gives “the public clear notice of the topics to be discussed at public meetings so that the public can attend a meeting when an issue of interest will be discussed.” *Sandoval v. Board of Regents*, 119 Nev. 148, 156, 67 P.3d 902, 906 (2003).

Here, according to the response received by this Office from the Office of the District Attorney, the sole purpose of the meeting was to discuss the proposed development. The agenda corroborates this assertion because there were only two items on the agenda. Item 2 on the agenda, however, does not state the location of the property, the APNs, nor the addresses. However, when the agenda items are read together, which is logical in this case given the special circumstances surrounding the meeting, it is clear what is to be deliberated and voted on during the appeal. This assertion is corroborated by the fact that 28 members of the public attended the meeting, several of which made public comments. Although agenda item 2 could have been clearer, and perhaps more complete, the evidence does not support that the Commission’s agenda item violated NRS 241.020(2).

Further, the fact that the word “hearing” is not in the agenda statement does not equate to a violation of the Open Meeting Law. The fact that the agenda statement stated that the item involved an appeal of a Planning Commission decision provides clear notice that some type of hearing process would occur. Thus, there is no violation of the Open Meeting Law for failing to use the word “hearing” in the agenda statement.

///



1           2.     *Did the Commission violate the Open Meeting Law by requesting that members*  
2 *of the public take an oath before making their public comments?*

3           As stated above, NRS 241.020(2)(c)(3) requires a period during the meeting for the  
4 public to address the public body – a public comment period. This Office has always stated  
5 that a public body may establish reasonable rules and regulations for the public comment  
6 portion of the meeting, but that such rules and regulations cannot deter public comment.  
7 NEVADA OPEN MEETING LAW MANUAL, § 8.04, at 60 (10<sup>th</sup> ed. 2005). See *also* OMLO 99-11  
8 (August 26, 1999).

9           NRS 244.065 states, “County commissioners are authorized and empowered to  
10 administer all oaths or affirmations necessary in discharging the duties of their office.” The  
11 Churchill County District Attorney Office’s response to this Open Meeting Law complaint is  
12 that the Commission may administer an oath pursuant to NRS 244.065, and that the Attorney  
13 General’s Office has no jurisdiction over the administering of such an oath by the  
14 Commission. This is accurate to some extent. However, if the oath is used in a disparate  
15 manner to deter public comment during a public meeting, the Attorney General’s Office would  
16 have jurisdiction over the issue pursuant to its enforcement authority found in NRS 241.037.  
17 Thus, the issue becomes: Did the requirement of the oath deter public comment resulting in  
18 a violation of the Open Meeting Law?

19           In this instance, the Commission requested that members of the public take an oath  
20 before commenting during the meeting. The record does not indicate that the developer’s  
21 representatives took such an oath, which indicates there was disparate treatment between  
22 the developer’s representatives and the members of the public. Although there was disparate  
23 treatment between the two groups, it appears that those who signed up to comment during  
24 the meeting made their comments. Therefore, there is no evidence to indicate that the  
25 disparate administration of the oath deterred members of the public from testifying or that a  
26 member of the public that refused to take the oath was not allowed to testify, and thus, there  
27 is no evidence to prove a violation of the Open Meeting Law occurred.

28 ///

1 It must be noted, however, that this Office does not approve of disparate treatment  
2 between members of the public during the public comment period of a meeting. Although  
3 members of the public were not deterred from testifying in this instance, if the Commission's  
4 actions could be construed as a deterrence to public testimony, this Office believes that is a  
5 violation of the Open Meeting Law.

6 V.

7 **CONCLUSION**

8 The Churchill County Commissioners did not violate the Open Meeting Law at its  
9 June 7, 2006 meeting, and the Office of the Nevada Attorney General is closing its file on this  
10 issue at this time.

11 DATED this 24<sup>th</sup> day of August, 2006.

12 GEORGE J. CHANOS  
13 Attorney General

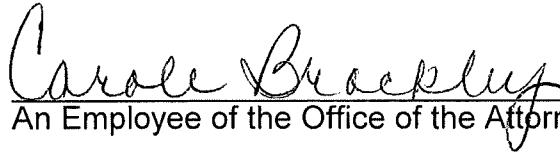
14 By: Neil A. Rombardo  
15 NEIL A. ROMBARDO  
16 Senior Deputy Attorney General  
17 Nevada State Bar No. 6800  
18 100 North Carson Street  
19 Carson City, Nevada 89701-4717  
20 (775) 684-1205

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 24<sup>th</sup> day of August, 2006, I mailed a copy of the Findings of Fact  
4 and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Albert Raney  
6 505 Mason Road  
7 Hazen, NV 89408

8 Norm Frey, Commissioner  
9 Churchill County Board of Commissers  
10 155 N. Taylor Street, Suite 110  
11 Fallon, NV 89406

12   
13 An Employee of the Office of the Attorney General

1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE

4 In the Matter of:

Attorney General File No. 06-025

5 NYE COUNTY BOARD OF COUNTY  
6 COMMISSIONERS

7 I.

8 INTRODUCTION

9 In a letter received June 16, 2006, by the Office of the Nevada Attorney General, Mr.  
10 John O. Green filed a complaint with this Office alleging a violation of the Nevada Open  
11 Meeting Law, NRS Chapter 241. In particular, Mr. Green alleges that the Nye County Board  
12 of County Commissioners (Board) violated the Open Meeting Law at its June 6, 2006 meeting  
13 by denying Mr. Green access to the Board's meeting.

14 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
15 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
16 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
17 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
18 and videotape recordings.

19 II.

20 FINDINGS OF FACT

21 Prior to June 1, 2006, a high profile murder case was being tried in the Fifth Judicial  
22 District Court (District Court) in Tonopah, Nevada. The District Court is located in a multi-  
23 entry facility that houses the majority of county agencies including the Board's meeting  
24 chambers. On June 1, 2006, a bomb threat was made on the courthouse. As a result of the  
25 bomb threat, the Nye County Manager and Sheriff immediately increased security for the  
26 building through the conclusion of the trial on June 14, 2006.

27 On June 1, 2006, Mr. Green, a janitor for the county, was asked to sign in before  
28 entering the building to perform his shift. Mr. Green refused the request, and it was not until

1 he was instructed by his supervisor that he agreed to sign in. Later that night, at the end of  
2 Mr. Green's shift, he was denied access to the building to check in with his supervisor. Upon  
3 being denied access this second time, Mr. Green handed his keys to the deputy and quit.

4 On June 6, 2006, the Board conducted a meeting in this facility. As a safety  
5 precaution, the sheriff's deputies assigned to the security detail required entrants to sign in  
6 before entering the public meeting. Upon attempting to enter the public meeting, Mr. Green  
7 was stopped by the assigned Sheriff's deputies and a sergeant. Mr. Green was not permitted  
8 to enter the meeting.<sup>1</sup> It is unclear whether Mr. Green refused to comply with the safety  
9 protocol or whether he was unilaterally denied access by the sheriff's deputies and/or  
10 sergeant because of his previous actions on June 1, 2006.

### 11 III.

#### 12 ISSUE

13 Did the Board violate the Open Meeting Law by denying him entry into the meeting?

### 14 IV.

#### 15 CONCLUSIONS OF LAW

16 NRS 241.020(1) states, in pertinent part, "all meetings of public bodies must be open  
17 and public, and all persons must be permitted to attend any meeting of these public bodies."  
18 Section 8.02 of the NEVADA OPEN MEETING LAW MANUAL states in part:

19 The Office of the Attorney General is of the opinion public bodies  
20 should avoid holding public meetings in places to which the  
21 general public does not feel free to enter, such as a restaurant,  
22 private home, or club. While perhaps not in violation of the letter  
of the Open Meeting Law, a meeting in such a location may be in  
violation of the law's spirit and intent. *Cf. Crist v. True*, 314 N.E.2d  
186 (Ohio Ct. App. 1973).

23 NEVADA OPEN MEETING LAW MANUAL, §8.02, at 59 (10th ed. 2005).

24 Here it could be argued that the Board, through the actions of the Sheriff's deputies,  
25 unreasonably denied Mr. Green access to the meeting. However, the facts of this particular  
26 case do not support that assertion.

27  
28 <sup>1</sup> Mr. Green alleges that he was threatened and/or provoked by the deputies assigned to the security  
detail, but this Office lacks jurisdiction to opine upon that issue.

1 In this case the county, in the interest of public health, safety, and welfare, had every  
2 reason to adopt security measures for the public entering the meeting. The security  
3 measures did not limit or deter attendance to the public meeting, and there are not enough  
4 facts to support that Mr. Green was *unreasonably* denied access. As a result, the meeting  
5 was not improperly closed to the public, and the Board did not violate the Open Meeting Law.

6 V.

7 **CONCLUSION**

8 The Nye County Board of County Commissioners did not violate the Open Meeting  
9 Law by refusing to permit Mr. Green to enter the June 6, 2006 meeting. As a result, the  
10 Office of the Nevada Attorney General is closing its file on this issue at this time.

11 DATED this 17<sup>th</sup> day of August 2006.

12 GEORGE J. CHANOS  
13 Attorney General

14  
15 By:



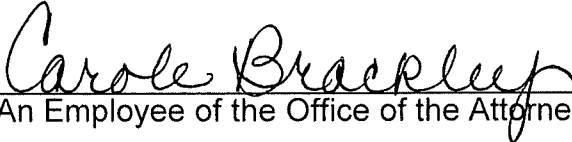
16 NEIL A. ROMBARDO  
17 Senior Deputy Attorney General  
18 Nevada State Bar No. 6800  
19 100 North Carson Street  
20 Carson City, Nevada 89701-4717  
21 (775) 684-1205

1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 18<sup>th</sup> day of August 2006, I mailed a copy of the Findings of Fact  
4 and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 John O. Green  
6 P.O. Box 1424  
7 Tonopah, NV 89049

8 James Ronald Kent, Esq.  
9 Chief Deputy District Attorney  
10 Office of the District Attorney of Nye County  
11 P.O. Box 593  
12 Tonopah, NV 89049

13   
14 An Employee of the Office of the Attorney General

1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE

4 In the Matter of: ) Attorney General File No. 06-029  
5 )  
6 BOARD OF HOMEOPATHIC MEDICAL )  
EXAMINERS )

7 I.

8 INTRODUCTION

9 In a letter received June 26, 2006, by the Office of the Nevada Attorney General,  
10 Dr. Daniel F. Royal filed a complaint with this Office alleging a violation of the Nevada Open  
11 Meeting Law, NRS Chapter 241. In particular, Dr. Royal alleges that the Board of  
12 Homeopathic Medical Examiners (Board) violated the Open Meeting Law at the Board's  
13 Fiscal/Financial Committee meeting on May 25, 2006 because a quorum of the Board  
14 participated in that meeting without properly noticing the meeting pursuant to NRS Chapter  
15 241.<sup>1</sup>

16 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
17 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
18 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
19 investigating this matter, this Office reviewed the complaint and supporting documents.

20 II.

21 FINDINGS OF FACT

22 The Board is a seven member public body. The Board created a Fiscal/Financial  
23 Committee (Subcommittee), which is a subcommittee of the Board. The Subcommittee has  
24 limited authority and must make recommendations to the Board for final approval. The  
25 Subcommittee is made up of four members, three of which are members of the Board.

26  
27  
28 <sup>1</sup> The Complainant raises other issues that do not relate to the Open Meeting Law and are outside the  
jurisdiction of this Office. Therefore, they will not be discussed herein.



1 It is alleged that the President of the Board, Dr. David Edwards, attended the May 25,  
2 2006 meeting of the Subcommittee, which would indicate that four of the seven members of  
3 the Board attended the meeting. The minutes do not indicate to what extent Dr. Edwards  
4 participated in the meeting, but the minutes do indicate that he sat as a member of the  
5 Subcommittee although he was not appointed to the Subcommittee. The meeting was not  
6 noticed as a Board meeting.

7 **III.**

8 **ISSUE**

9 Did the Board violate the Open Meeting Law by conducting a meeting without properly  
10 noticing the meeting pursuant to NRS Chapter 241?

11 **IV.**

12 **CONCLUSIONS OF LAW**

13 NRS 241.015(2), in pertinent part, defines the term "meeting" as:

14 2. "Meeting":

15 (a) Except as otherwise provided in paragraph (b), means:

16 (1) The gathering of members of a public body at which a  
17 *quorum* is present to deliberate toward a decision or to take action  
on any matter over which the public body has supervision, control,  
jurisdiction or advisory power. [Emphasis added.]

18 NRS 241.015(4) defines the term "quorum" as "a simple majority of the constituent  
19 membership of a public body or another proportion established by law." NRS 241.020(2)  
20 requires a public body to post a written notice of all meetings at least three working days  
21 before the meeting.

22 Here, a quorum of the Board attended the Subcommittee meeting. It appears that the  
23 quorum of the Board participated in the Subcommittee meeting. Since the meeting was not  
24 noticed as a Board meeting, but as a Subcommittee meeting only, the Board violated the  
25 Open Meeting Law by conducting a Board meeting without the proper written notice required  
26 by NRS 241.020(2).

27 In response to the complaint, counsel for the Board argued that the Chairman of the  
28 Board could sit as a member of any subcommittee pursuant to Robert's Rules of Order, which

1 is the procedural set of rules adopted by the Board and its subcommittees. However, the  
2 procedural rules are not recognized as law in Nevada, and therefore, cannot be used to  
3 supersede the Open Meeting Law, NRS §§ 241.010 -.040. Robert's Rules of Order are useful  
4 procedural guidelines. However, the definition of a "meeting" is controlled by the Nevada  
5 Open Meeting Law.

6 Although the Board violated the Open Meeting Law at the Subcommittee meeting, the  
7 Board reconsidered the items voted on at that meeting at a subsequent Board meeting. The  
8 subsequent Board meeting was properly noticed and conducted pursuant to the Open  
9 Meeting Law. Thus, the Board cured its violation, and at this time, this Office has no reason  
10 to take legal action against the Board. But, this Office advises the Board to avoid  
11 inadvertently conducting Board meetings at Subcommittee meetings.

12 V.

13 **CONCLUSION**

14 The Board of Homeopathic Medical Examiners inadvertently violated the Open  
15 Meeting Law by a quorum of the Board conducting and participating during the  
16 Fiscal/Financial Committee meeting. The Office of the Nevada Attorney General advises the  
17 Board of Homeopathic Medical Examiners to be aware of this problem and avoid a quorum of  
18 its Board from attending and participating in future Subcommittee meetings.

19 DATED this 24<sup>th</sup> day of August, 2006.

20 GEORGE J. CHANOS  
21 Attorney General

22  
23 By: Neil A. Lombardo  
24 NEIL A. ROMBARDO  
25 Senior Deputy Attorney General  
26 Nevada State Bar No. 6800  
27 100 North Carson Street  
28 Carson City, Nevada 89701-4717  
(775) 684-1205

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 24<sup>th</sup> day of August, 2006, I mailed a copy of the Findings of Fact  
4 and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Daniel F. Royal, D.O., H.M.D., J.D.  
6 New Hope Medical LLC  
7 10120 S. Eastern Ave., Suite 100  
8 Henderson, NV 89502

9 David A. Edwards, President  
10 Board of Homeopathic Medical Examiners  
11 615 Sierra Rose Dr., Suite 3  
12 Reno, NV 89511

13   
14 An Employee of the Office of the Attorney General

1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE

4 In the Matter of:

Attorney General File No. 06-030

5 MINERAL COUNTY SCHOOL DISTRICT  
6 BOARD OF TRUSTEES

7 I.

8 INTRODUCTION

9 In a letter received July 25, 2006, by the Office of the Nevada Attorney General,  
10 Mr. Richard Bishop filed a complaint with this Office alleging a violation of the Nevada Open  
11 Meeting Law, NRS Chapter 241. In particular, Mr. Bishop alleges that the Mineral County  
12 School District Board of Trustees (Board) violated the Open Meeting Law at its July 25, 2006  
13 meeting by improperly noticing a closed session on the agenda.

14 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
15 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
16 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
17 investigating this matter, this Office reviewed the complaint, agenda, and supporting  
18 documents.

19 II.

20 FINDINGS OF FACT

21 On July 25, 2006, the Board held an open meeting. Item 11 on the agenda was  
22 noticed as: "Discussion and appropriate action on the character, allegations of misconduct,  
23 professional competence, or physical or mental health of Mr. Robert Gorder." Item 12 stated,  
24 "Discussion and appropriate action to move into closed session to review Grievance Control  
25 #0506-08 submitted on behalf of Maria Bellamy." Item 13 stated, "Discussion and consider  
26 Grievance Control #0506-08 submitted on behalf of Maria Bellamy," and item 14 was noticed  
27 as "Discussion and appropriate action on Grievance Control #0506-08 submitted on behalf of

28 ///

1 Maria Bellamy.” Maria Bellamy sought to have her grievance placed on the agenda and was  
2 the person considered in items 12, 13, and 14.

3 III.

4 ISSUE

5 Did the Board violate the Open Meeting Law by failing to properly notice items 11, 12,  
6 13, and 14 on its agenda?

7 IV.

8 CONCLUSIONS OF LAW

9 NRS 241.020(2)(c)(1) requires a public body to post a written notice three working days  
10 prior to a public meeting, and the notice must consist of an agenda with “[a] clear and  
11 complete statement of the topics scheduled to be considered during the meeting.”  
12 NRS 241.020(2)(c)(4) requires a public body to place on the agenda the name of a person  
13 whose character, alleged misconduct, or professional competence is being considered by the  
14 public body.

15 Here, the Board placed the names of the persons being considered, Robert Gorder  
16 and Maria Bellamy, on the agenda. Therefore, the Board complied with  
17 NRS 241.020(2)(c)(4).

18 The issue then becomes whether the agenda statements are clear and complete.  
19 “Agenda items must be described with clear and complete detail so that the public will receive  
20 notice in fact of what is to be discussed by the public body.” NEVADA OPEN MEETING LAW  
21 MANUAL, § 7.02, at 55 (10th ed. 2005). Although § 9.04 of the NEVADA OPEN MEETING LAW  
22 MANUAL recommends that the agenda item for a closed session contain the “parameters of  
23 allowable action,” this is not required by the Open Meeting Law nor is it required to make an  
24 agenda statement “clear and complete.” Therefore, the fact that the agenda statements do  
25 not contain such language does not, *per se*, result in a violation of the Open Meeting Law.

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1 Here, agenda item 11 is clear that the Board may take action concerning Mr. Gorder  
2 regarding his character, allegations of misconduct, professional competence, or physical or  
3 mental health. This agenda statement provides the public notice in fact that the Board may  
4 make a decision that affects Mr. Gorder's employment status with the school district. Thus,  
5 the agenda statement is clear and complete.

6 Agenda items 12 through 14 lay out different steps the Board may take in considering  
7 Ms. Bellamy's character and/or professional competence. Although this Office recommends  
8 that all public bodies, when considering an employee's employment status, include the  
9 language of "character, alleged misconduct, professional competence, or physical or mental  
10 health" found in NRS 241.030(2), failure to include such language is not a *per se* violation of  
11 the Open Meeting Law.

12 Again, it must be determined whether agenda statements 12 through 14 provide the  
13 public with notice in fact of what the public body is doing. NEVADA OPEN MEETING LAW MANUAL,  
14 § 7.02, at 55 (10th ed. 2005). The agenda statements lay out the procedure that the Board  
15 must follow to close the meeting, consider the character, alleged misconduct, and/or  
16 professional competence of Ms. Bellamy, and then, return to an open meeting to vote.  
17 Therefore, this Office cannot find that agenda statements 12 through 14 violate the Open  
18 Meeting Law. This Office, however, recommends in the future, that the Board add the  
19 language regarding "character, alleged misconduct, professional competence, or physical or  
20 mental health" to similar agenda items for further clarity.

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V.

CONCLUSION

The Office of the Nevada Attorney General finds that the Mineral County School Board of Trustees complied with the Open Meeting Law, and therefore, at this time, this Office is closing its file on this issue at this time.

DATED this 26<sup>th</sup> day of September, 2006.

GEORGE J. CHANOS  
Attorney General

By:



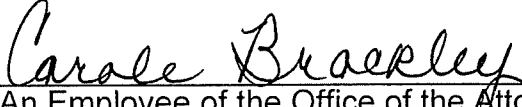
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 26<sup>th</sup> day of September, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Mr. Richard Bishop  
P.O. Box 1200  
Hawthorne, NV 89415

Steven E. Cook, Superintendent  
Mineral County School District  
P.O. Box 1540  
Hawthorne, NV 89415

  
An Employee of the Office of the Attorney General



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4

**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

5 In the Matter of: ) Attorney General File No. 06-031  
6 CARSON CITY BOARD OF )  
7 SUPERVISORS )

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8 I.

9 **INTRODUCTION**

10 In a letter received July 20, 2006 by the Office of the Nevada Attorney General, Sam  
11 Dehné filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law,  
12 NRS Chapter 241. In particular, Mr. Dehné alleged that the Carson City Board of Supervisors  
13 (Board) violated the Open Meeting Law at its July 6, 2006 meeting by failing to follow the  
14 agenda, refusing to remove Item 4-3 from the Consent Agenda pursuant to Mr. Dehné's  
15 request, and by failing to allow public comments on agenda item 12(A).

16 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
17 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
18 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
19 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
20 and video tape recordings.

21 II.

22 **FINDINGS OF FACT**

23 On July 6, 2006, the Board conducted a properly noticed meeting as part of an agenda  
24 entitled "CARSON CITY CONSOLIDATED MUNICIPALITY NOTICE OF MEETING OF THE  
25 CARSON CITY BOARD OF SUPERVISORS." The agenda listed five unnumbered items,  
26 including a "Call to Order," a "Roll Call," an "Invocation," a "Pledge of Allegiance," and "Citizen

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1 Comments on Non-Agendized Items.” The agenda then moved into numbered items,  
2 beginning with “1. Action on Approval of Minutes.” There was no agenda item listed for  
3 comment on agendized items.

4 After completing the first three numbered items on the agenda, the Board moved to the  
5 “Consent Agenda,” which consisted of six items. There is a statement at the beginning of this  
6 portion of the agenda which states that:

7 “All matters listed under the Consent Agenda are considered  
8 routine and may be acted upon by the Board of Supervisors with  
9 one action and without an extensive hearing. Any member of the  
10 Board or any citizen may request that an item be taken from the  
11 Consent Agenda, discussed and acted upon separately during this  
12 meeting.”

13 Mr. Dehné requested that Item 4-3, dealing with the setting of minimum compensation for the  
14 Justices of the Peace in Carson City, be removed from the Consent Agenda. Mayor Teixeira  
15 denied the request, stating that the Board represents the citizens and taxpayers of Carson  
16 City and attempts to conduct its business in the most economical and expeditious fashion  
17 possible. Mayor Teixeira questioned the need to go into issues on behalf of an individual who  
18 would not be impacted by that decision, as he was not a resident of the City, did not own a  
19 business, pay taxes, or vote in the City. The Mayor stated that Mr. Dehné was attempting to  
20 tell the Board how to conduct its business. Mayor Teixeira indicated that he has broad  
21 discretion and has the authority to decide what will be included in and what may be pulled  
22 from the Consent Agenda and that pulling the requested item would result in a waste of  
23 taxpayer funds. The Mayor indicated that Mr. Dehné could file another complaint with the  
24 Attorney General’s Office.

25 Later in the meeting, Mayor Teixeira moved Item 12(A) up in the agenda for  
26 consideration. This item dealt with an action to approve assisting the American Legion in  
27 constructing a Veterans’ Memorial at the Lone Mountain Cemetery. Representatives of the  
28 Legion made a presentation to the Board, followed by comments by members of the Board.  
Mayor Teixeira called for a motion to approve assistance to the Legion, which was made,  
seconded, and passed. However, the Board did not call for public comment on this agenda

1 item, as is its pattern and practice. Mr. Dehné asked to be allowed to comment on this  
2 agenda item prior to the vote, stating that he was a veteran. Mayor Teixeira stated that the  
3 Memorial was being funded by the community and stated that Mr. Dehné should not tell him  
4 how to run the meeting. The Mayor also stated that he was a veteran, and there were several  
5 other veterans there as well.

6 **III.**

7 **ISSUES**

8 A. Does the Open Meeting Law require a public body to pull an item from a  
9 Consent Agenda when that request is made by a member of the public in reliance on a  
10 statement on the agenda?

11 B. Does the Open Meeting Law require a public body to allow public comment on  
12 agenda items?

13 **IV.**

14 **CONCLUSIONS OF LAW**

15 A. *Does the Open Meeting Law require a public body to pull an item from a*  
16 *Consent Agenda when that request is made by a member of the public in reliance on a*  
17 *statement on the agenda?*

18 "[T]he purpose of the agenda is to give the public notice of what its government is doing,  
19 has done, or may do." NEVADA OPEN MEETING LAW MANUAL, § 7.02, at 55 (10<sup>th</sup> ed. 2005).  
20 NRS 241.020(1) provides that, "[e]xcept as otherwise provided by specific statute, all meetings  
21 of public bodies must be open and public, and all persons must be permitted to attend any  
22 meeting of these bodies." NRS 241.020(2)(c)(3) provides that the agenda must have a period  
23 devoted to comments by the general public. In determining whether an agenda statement  
24 complies with the "clear and complete" standard, the courts will look to see if the agenda  
25 statement gives "the public clear notice of the topics to be discussed at public meetings so that  
26 the public can attend a meeting when an issue of interest will be discussed." *Sandoval v. Board*  
27 *of Regents*, 119 Nev. 148, 155, 67 P.3d 902, 906 (2003).

28 The statement at issue in this complaint does not involve a specific agenda item but

1 instead refers to a procedure allowing requests to pull items from the Consent Agenda. The  
2 language used indicates that items may be requested to be pulled from the Consent Agenda  
3 at the request of a member of the Board or a citizen. The Board drafted and posted the  
4 agenda at issue. While the Open Meeting Law does not require a public body to allow a  
5 member of the public to be able to remove items from a Consent Agenda, it does require that  
6 the public body conform its actions to the agenda as posted. The statement on the agenda is  
7 ambiguous as to whether all requests to pull items from the Consent Agenda would be  
8 granted. The Board obviously interpreted the language used to allow it discretion to grant or  
9 deny a request to remove an item from the Consent Agenda, while Mr. Dehné interpreted the  
10 language to mean that any request for items to be removed from the Consent Agenda would  
11 be granted. Both interpretations can be supported by the language used, and the actions  
12 taken by the Board based on their interpretation do not rise to the level of violation of the  
13 Open Meeting Law. In an effort to eliminate this ambiguity, this Office would recommend that  
14 the Board add a statement to the language outlining the procedure used for its Consent  
15 Agenda indicating that the Board retains discretion in deciding whether or not to pull an item  
16 from the Consent Agenda pursuant to a request from the public. Alternatively, the Board  
17 could delete the language regarding removal of items from the Consent Agenda, as such  
18 language is not required under the Open Meeting Law and the lack of said language on the  
19 agenda would not prevent the Board from removing items from the Consent Agenda upon  
20 request.

21 This Office is, however, concerned about comments made by the Board regarding  
22 limiting of public comment and participation during the meeting to taxpayers or voters in the  
23 Carson City area. The Open Meeting Law applies to members of the general public and does  
24 not limit the protections afforded thereby to residents, taxpayers, or voters in any one county  
25 or state. Further, the Open Meeting Law allows for "comments by the general public." See  
26 NRS 241.020(2)(c)(3). The Board is cautioned that any further attempts to limit public  
27 participation in the manner outlined above may result in litigation for violation of the Open  
28 Meeting Law.

1 B. *Does the Open Meeting Law require a public body to allow public comment on*  
2 *agenda items?*

3 NRS 241.020(2)(c)(3) requires that an agenda for a meeting of a public body provide a  
4 period dedicated to comments by the general public. Except during the public comment  
5 period required by NRS 241.020(2)(c)(3), the Open Meeting Law does not mandate that  
6 members of the public be allowed to speak during meetings. The Open Meeting Law does not  
7 require that public comment be allowed during agenda items other than during the public  
8 comment period. OMLO 01-028 (September 12, 2001). However, a public body cannot  
9 restrict the public comment section of the agenda to non-agenda items unless the public is  
10 allowed to speak on agenda items as they are being discussed. OMLO 99-08 (July 8, 1999).

11 The agenda for the meeting at issue contained one public comment section, and that  
12 section was limited to non-agenda items. The Board's pattern and practice during the meeting  
13 was to take public comment on each agenda item, in compliance with the Open Meeting Law,  
14 when the only agendized public comment period was limited to non-agenda items. However,  
15 the Board did not allow public comment on Item 12(A), despite a request from a member of  
16 the public to enter such comment. This is a violation of the Open Meeting Law, and the Board  
17 should take corrective action to ensure that future violations do not occur.

18 V.

19 **CONCLUSION**

20 The Carson City Board of Supervisors did not violate the Open Meeting Law by its denial  
21 of a request from a member of the public to remove an item from the Consent Agenda. The  
22 Board did violate the Open Meeting Law by its refusal to allow public comment on Item 12(A).

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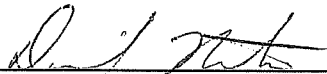
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1 The Office of the Nevada Attorney General trusts and expects the Carson City Board  
2 Supervisors to act in a manner consistent with this opinion. Failure to do so may result  
3 litigation.

4 DATED this 7<sup>th</sup> day of December, 2006.

5 GEORGE J. CHANOS  
6 Attorney General

7  
8 By:

  
9 DAVID W. NEWTON  
10 Deputy Attorney General  
11 Nevada State Bar No. 7843  
12 555 E. Washington, Suite 3900  
13 Las Vegas, NV 89101  
14 702-486-3898  
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 11<sup>th</sup> day of December, 2006, I mailed a copy of Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Mr. Sam Dehné  
297 Smithridge  
Reno, NV 89502-5745

Mary-Margaret Madden, Esq  
Deputy District Attorney  
Office of the District Attorney  
885 East Musser St., Suite 2030B  
Carson City, NV 89701-4475

  
An Employee of the Office of the Attorney General

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1 Unless otherwise stated, items may be taken out of the order  
2 presented on the agenda by the discretion of the Chairperson.  
3 *Persons who have business before the Commission are solely  
4 responsible to see that they are present when their business is  
5 conducted.* [Emphasis added.]

6 Besides the public notice discussed above, Mr. Giusti received personal notice of the  
7 date, time, and place of the Commission meeting. The Division personally noticed Mr. Giusti  
8 because he is a provider of education courses for real estate licensees, and, as such, three of  
9 his courses were listed on the agenda for this meeting. The personal notice also stated, "The  
10 hearing has a stacked agenda. This means that I cannot be more specific regarding the time  
11 your course will be heard."

12 Prior to the meeting, Mr. Giusti spoke to Ms. Smith of the Division regarding the  
13 scheduled three day meeting. At Mr. Giusti's request, and in an effort to assist Mr. Giusti so  
14 that he would not have to attend all three days of the Commission's meeting, Ms. Smith  
15 estimated that Mr. Giusti's issues would be considered on the second day of the  
16 Commission's meeting. She also informed him, however, that this was an estimate of when  
17 his item would be considered and that she could not be absolutely positive the Division would  
18 hear the item on the second day.

19 The Commission proceeded through its agenda quicker than expected, and, as a  
20 result, the Commission deliberated and took action on Mr. Giusti's courses on the first day of  
21 the meeting. As a result, Mr. Giusti failed to appear for the consideration, deliberations, and  
22 actions on his three real estate courses.<sup>1</sup>

23 III.

24 ISSUE

25 Did the information provided by the Division to Mr. Giusti result in a violation of the  
26 Open Meeting Law?

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<sup>1</sup> This information contained in the "Findings of Facts" in this opinion, in part, was established through an investigation by the Department of Business and Industry.

1 IV.

2 CONCLUSIONS OF LAW

3 NRS 241.020(2)(a)–(c) requires a public body to provide notice of a meeting to the  
4 public. As a part of the public notice, the public body must list the time, place, and location of  
5 the meeting. It must also state the locations of the notices posted, as well as an agenda with  
6 a time for public comment, a list of action items, and a clear and complete statement of topics  
7 to be considered at the meeting. NRS 241.033 requires a public body to notice a person  
8 when that person’s character, alleged misconduct, professional competence, or physical or  
9 mental health is to be considered by the public.

10 Here, the Commission properly noticed the meeting pursuant to NRS 241.020, and the  
11 Commission provided written personal notice.<sup>2</sup> Therefore, the issue becomes did the  
12 subsequent comments of the Division somehow vitiate the notices provided to Mr. Giusti  
13 resulting in an Open Meeting Law violation.

14 If, there was evidence that the Commission and/or Division intentionally deceived  
15 Mr. Giusti to prevent him from attending the meeting, a potential violation of the Open Meeting  
16 Law would exist. However, there is no proof offered to substantiate such an allegation. In  
17 fact, Mr. Giusti was on sufficient notice that the Commission may consider items on the  
18 agenda out of order. Further, he was noticed that it was his responsibility to attend the  
19 meeting when his business was to be considered. Therefore, this Office finds that the  
20 Commission did not violate the Open Meeting Law.

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28 <sup>2</sup> Whether personal notice, pursuant to NRS 241.033, is required for the items being considered is not an  
issue in this opinion, and therefore, this office will go no further in its analysis on this issue.

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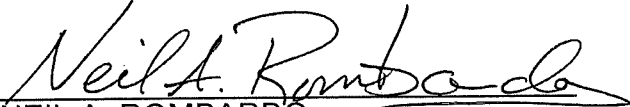
V.

CONCLUSION

The Office of the Nevada Attorney General finds that the Nevada Real Estate Commission did not violate Nevada's Open Meeting Law, and the Attorney General's Office is closing its file on this issue at this time.

DATED this 2nd day of October, 2006.

GEORGE J. CHANOS  
Attorney General

By:   
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 2nd day of October, 2006, I mailed a copy of the Findings of Fact  
4 and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Martin (Mike) Giusti  
6 P.O. Box 5564  
7 Reno, NV 89513

8 Kateri Cavin, Esq.  
9 Office of the Attorney General  
10 100 North Carson Street  
11 Carson City, NV 89701  
12 *Counsel for the Nevada Real  
13 Estate Commission*

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15 \_\_\_\_\_  
16 An Employee of the Office of the Attorney General  
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1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE  
4

5 In the Matter of:

6 MOAPA VALLEY TOWN ADVISORY BOARD }  
7 and CLARK COUNTY PLANNING }  
8 COMMISSION }

Attorney General File No. 06-034  
OMLO 2006-09

9 I.

10 INTRODUCTION

11 In a letter received August 23, 2006 by the Office of the Nevada Attorney General,  
12 Ms. Dorene Starita filed a complaint with this Office alleging a violation of the Nevada Open  
13 Meeting Law, NRS Chapter 241. In particular, Ms. Starita alleges that the Moapa Valley  
14 Town Advisory Board (Board) and the Clark County Planning Commission (Commission)  
15 violated the Open Meeting Law at their July 26, 2006 and August 17, 2006 meetings,  
16 respectively, by failing to provide proper public notice.

17 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
18 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to  
19 that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
20 investigating this matter, this Office reviewed the complaint, agenda, and supporting  
21 documents.

22 II.

23 FINDINGS OF FACT

24 NRS 278.150 requires Clark County to prepare a master plan for the county, and  
25 NRS 278.160 lists the comprehensive information that must be contained in the master plan.  
26 NRS 278.170 permits a county to divide the master plan into smaller units, a process which  
27 Clark County follows. The particular plan at issue is the Northeast Clark County Land Use  
28 Plan (Plan), which covers 2,700 square miles of land in the less-populated Northeast Clark  
County.

1 On July 26, 2006, the Board conducted a public meeting pursuant to NRS 278.220  
2 and NRS 241.010-.040 to update the Plan. Pursuant to NRS 278.220(3), the Board placed a  
3 notice regarding the Plan in a newspaper of general circulation at least 20 days prior to the  
4 hearing. The Board also posted an agenda for the meeting three days prior to the meeting  
5 pursuant to NRS 241.020. On the public notice, as part of the agenda, in bold lettering, Item  
6 VI(3), under the heading "Zoning," stated:

7 Northeast Clark County Land Use Update – TAB to take testimony,  
8 make appropriate changes and make a recommendation to the  
9 Planning Commission and Board of County Commissioners on the  
update of the Northeast Clark County Land Use Plan.

10 During the consideration and deliberation of this item, the Board chose to break the item up  
11 into 36 individual items that were heard, discussed, and voted on by the Board. All of these  
12 items related to the Plan, but none of these items were listed on the agenda. After the  
13 actions taken by the Board, the Plan was forwarded to the Commission.

14 On August 17, 2006, the Commission placed on its agenda, as agenda item 28, the  
15 following statement:

16 That the Clark County Planning Commission conduct a public  
17 hearing and approve, adopt, and authorize the Chairman to sign a  
18 resolution amending the Comprehensive Plan by adopting an  
update to the Northeast Land Use Plan; and direct staff  
accordingly.

19 Similar to the Board, the Commission chose to break up the proposed changes to the Plan  
20 into different items. The Commission also took action on these items separately. These  
21 items also related to the Plan, but none of these items were listed separately on the agenda.

22 **III.**

23 **ISSUE**

24 Did the Board and/or the Commission fail to provide "clear and complete" notice as  
25 required by NRS 241.020(2)?

26 **IV.**

27 **CONCLUSIONS OF LAW**

28 NRS 241.020(2)(c)(1) requires a public body to post an agenda consisting of "a clear and

1 complete statement of the topics scheduled to be considered during the meeting.” In  
2 *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003), the Nevada Supreme  
3 Court considered the “clear and complete” requirement found in NRS 241.020(2)(c)(1). The  
4 Court stated, “Nevada’s Open Meeting Law seeks to give the public clear notice of the topics  
5 to be discussed at public meetings so that the public can attend a meeting when an issue of  
6 interest will be discussed.” *Sandoval*, 119 Nev. at 155, 67 P.3d at 905. The Court also  
7 stated, “[T]he plain language of NRS 241.020(2)(c)(1) requires that discussion at a public  
8 meeting cannot exceed the scope of a clearly and completely stated agenda topic.” *Id.* at  
9 154, 67 P.3d at 905.

10 Here, the agenda statements clearly place the public on notice that the Board and/or  
11 Commission will be considering and taking action on the Plan. Therefore, the issue becomes  
12 did the Board and/or Commission exceed the agenda statements by breaking up the Plan  
13 into several parts and taking action on those parts individually.

14 This Office has always maintained that the public’s right to meaningful notice and  
15 information is paramount in the Open Meeting Law. But, this Office has also opined that the  
16 Open Meeting Law must be reasonably interpreted so as not to completely debilitate the  
17 efforts of public bodies. In this case, the Plan covers over 2,000 square miles of land.  
18 Further, the individual parts voted on by both the Board and/or Commission related to the  
19 Plan, and as previously stated, the agenda statements were clear that the Board and/or  
20 Commission would be deliberating and taking potential action on the Plan. As a result, the  
21 public received notice that the Board and/or Commission would consider, deliberate about,  
22 and take action on the Plan.

23 It is also unreasonable to expect the Board and/or Commission to place on the agenda  
24 every conceivable issue that may arise from a master plan that covers over 2,000 square  
25 miles. Further, for the sake of clarity and efficiency, it is reasonable to divide the plan into  
26 various parts for approval. Therefore, this Office cannot find a violation by the Board and/or  
27 Commission.

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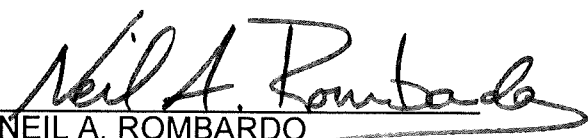
V.

CONCLUSION

The Office of the Nevada Attorney General does not find a violation by either the Moapa Valley Town Advisory Board or the Clark County Planning Commission. The Office of the Nevada Attorney General is closing its file on this issue at this time.

DATED this 13<sup>th</sup> day of October, 2006.

GEORGE J. CHANOS  
Attorney General

By:   
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205



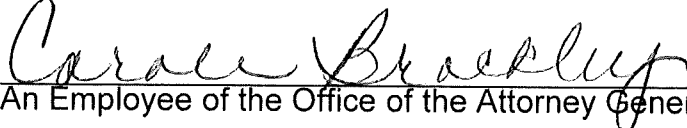
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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 13<sup>th</sup> day of October, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Ms. Dorene Starita  
P.O. Box 782  
Logandale, NV 89021

Mary-Anne Miller, Esq.  
Office of the District Attorney  
P.O. Box 552215  
Las Vegas, NV 89155-2215

  
An Employee of the Office of the Attorney General

1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE  
4

5 In the Matter of:

Attorney General File No. 06-037

6 WASHOE COUNTY BOARD OF COUNTY  
7 COMMISSIONERS  
8

9 I.

10 INTRODUCTION

11 In a letter received September 18, 2006, by the Office of the Nevada Attorney General,  
12 Mr. Guy P. Felton III filed a complaint with this Office alleging a violation of the Nevada Open  
13 Meeting Law, NRS Chapter 241. In particular, Mr. Felton alleges that the Washoe County  
14 Board of County Commissioners (Commission) violated the Open Meeting Law at its  
15 August 22, 2006 meeting by excluding Mr. Felton from the meeting for comments he made  
16 during the public comment portion of the meeting.

17 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
18 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
19 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
20 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
21 and audiotape recordings.

22 II.

23 FINDINGS OF FACT

24 On August 22, 2006, the Commission conducted a properly noticed public meeting.  
25 During the public comment portion of the meeting, Mr. Felton made public comments.  
26 Mr. Felton, who has a long history with the Commission, began his comments in an unusually  
27 loud and provocative tone. Mr. Felton called Judge Dannon a "kangaroo judge" and referred  
28 to Commissioner Sferrazza's comments as "mealy-mouthed." Chairman Larkin instructed

1 Mr. Felton to conduct himself with the appropriate decorum. However, Mr. Felton ignored this  
2 instruction and continued to make comments of an insulting personal nature. He next stated  
3 that it was a "joke" that Commissioners Sferrazza, Weber, and Humke were running for  
4 re-election, and he stated that any person who would vote for them was an "idiot." At this  
5 point in the meeting, Chairman Larkin adjourned the meeting and removed Mr. Felton from  
6 the Commission's chambers.

7 **III.**

8 **ISSUE**

9 Did the Commission violate the Open Meeting Law by excluding Mr. Felton from the  
10 Commission's meeting?

11 **IV.**

12 **CONCLUSIONS OF LAW**

13 This Office has always opined that a public body may establish "[r]easonable rules and  
14 regulations that ensure orderly conduct of a public meeting and ensure orderly behavior on  
15 the part of those persons attending the meeting . . . ." NEVADA OPEN MEETING LAW MANUAL,  
16 § 8.04, at 60 (10<sup>th</sup> ed. 2005). For example, the Open Meeting Law does not require a public  
17 body to tolerate comments that are "willfully disruptive of the meeting by being irrelevant,  
18 repetitious, slanderous, offensive, inflammatory, irrational or amounting to personal attacks  
19 . . . ." *Id.* Section 8.05 of the NEVADA OPEN MEETING LAW MANUAL states that the chair of a  
20 public body may, without the vote of the public body, "declare a recess and remove a person  
21 who is disrupting the meeting." *Id.*, § 8.05, at 61, *see also* OMLO 2005-17.

22 Mr. Felton relied on NRS 241.0353(2) to make his comments. NRS 241.0353(2)  
23 states:

24 A witness who is testifying before a public body is absolutely  
25 privileged to publish defamatory matter as part of a public meeting,  
26 except that it is unlawful to misrepresent any fact knowingly when  
testifying before a public body.

27 ///

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1 "Defamation" is defined as "[a]n intentional false communication, either published or publicly  
2 spoken, that injures another's reputation or good name." BLACK'S LAW DICTIONARY 417 (6<sup>th</sup> ed.  
3 1990). "Privilege" means "[a] particular and peculiar benefit or advantage enjoyed by a  
4 person, company, or class, beyond the common advantages of other citizens." BLACK'S LAW  
5 DICTIONARY 1197-1198 (6<sup>th</sup> ed. 1990). Thus, in analyzing NRS 241.0353 in its entirety, and  
6 the definitions of "defamation" and "privilege," it must be deduced that a person, at a public  
7 meeting, may publish defamatory comments without facing potential civil liability. This is the  
8 absolute privilege afforded by NRS 241.0353.

9 In this instance, however, NRS 241.0353 does not apply to the exclusion of Mr. Felton  
10 for willfully disrupting the meeting by making comments that amount to "irrelevant, repetitious,  
11 slanderous, offensive, inflammatory, irrational or amounting to personal attacks . . . ." NEVADA  
12 OPEN MEETING LAW MANUAL, § 8.04, at 60 (10<sup>th</sup> ed. 2005). NRS 241.0353 provides Mr. Felton  
13 a privilege from civil liability for his comments, but NRS 241.0353 does not require a public  
14 body to tolerate comments that are disruptive during a meeting. As a result, this Office  
15 opines that NRS 241.0353 does not change, in any way, its previous opinions as found in  
16 Sections 8.04 or 8.05 of the NEVADA OPEN MEETING LAW MANUAL.

17 This Office is always concerned with the exclusion of a member of the public from a  
18 public meeting, and this Office recommends that this approach is only used as a solution of  
19 last resort. However, in this case, Chairman Larkin appropriately warned Mr. Felton to  
20 comply with the Commission's reasonable rules and regulations regarding his conduct, and  
21 his refusal to comply with these reasonable rules and regulations led to his exclusion from the  
22 meeting. As a result, the Commission did not violate the Open Meeting Law by excluding  
23 Mr. Felton from the meeting.

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V.

CONCLUSION

The Washoe County Board of County Commissioners did not violate the Open Meeting Law by excluding Mr. Felton from the August 22, 2006 meeting. The Office of the Nevada Attorney General is closing its file on this issue at this time.

DATED this 16<sup>th</sup> day of November, 2006.

GEORGE J. CHANOS  
Attorney General


By:   
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 16<sup>th</sup> day of November, 2006, I mailed a copy of the Findings of  
4 Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Guy P. Felton III  
6 1220 Salem Place #5  
7 Reno, NV 89509

8 Robert Larkin, Chairman  
9 Washoe County Commission  
10 P.O. Box 11130  
11 Reno, NV 89520

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13 An Employee of the Office of the Attorney General  
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**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

5 In the Matter of: ) Attorney General File No. 06-038  
6 CARSON CITY BOARD OF )  
7 SUPERVISORS )

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8 I.

9 **INTRODUCTION**

10 In a letter received September 27, 2006, by the Office of the Nevada Attorney General,  
11 Jean Bondiott filed a complaint with this Office alleging a violation of the Nevada Open  
12 Meeting Law, NRS Chapter 241. In particular, Ms. Bondiott alleged that the Carson City  
13 Board of Supervisors (Board) violated the Open Meeting Law at or prior to its September 21,  
14 2006 meeting by conducting deliberations regarding and/or approving Item 11(A) prior to  
15 holding a public hearing regarding that item.

16 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
17 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
18 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
19 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
20 and video and audiotape recordings.

21 II.

22 **FINDINGS OF FACT**

23 On September 21, 2006, the Board conducted a properly noticed meeting as part of an  
24 agenda entitled "CARSON CITY CONSOLIDATED MUNICIPALITY NOTICE OF MEETING  
25 OF THE CARSON CITY BOARD OF SUPERVISORS." Agenda Item 11(A) was listed as an  
26 action item to consider a Tentative Planned Unit Development application for Clear View  
27 Ridge.

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1 During the hearing on this matter, Ernesto Flores, the developer behind the Clear View  
2 Ridge project, testified before the Board and stated that "I did everything you asked me to do,"  
3 "you invited me, you told me how to do it, I did it, and I'm here" and "you brought me here."

4 After the meeting Supervisor Richard Staub granted an interview to  
5 www.NewsCarsonCity.com and, during that interview, stated that "We did recruit this  
6 gentleman to come to town, and we coached him through the process, and this was pursuant  
7 to a master plan. . . . The only flaw was, to everyone's surprise, the Planning Commission  
8 just dumped it. I think we have to realistically look at the commitments we made to this  
9 gentleman."

10 III.

11 ISSUE

12 Did the Carson City Board of Supervisors deliberate regarding and/or decide to  
13 approve Agenda Item 11(A) prior to the September 21, 2006 Board meeting?

14 IV.

15 CONCLUSIONS OF LAW

16 *Did the Carson City Board of Supervisors deliberate regarding and/or decide to*  
17 *approve Agenda Item 11(A) prior to the September 21, 2006 Board meeting?*

18 "[T]he purpose of the agenda is to give the public notice of what its government is doing,  
19 has done, or may do." NEVADA OPEN MEETING LAW MANUAL, § 7.02 (10<sup>th</sup> ed. 2005).

20 NRS 241.020(1) provides that, "[e]xcept as otherwise provided by specific statute, all meetings  
21 of public bodies must be open and public, and all persons must be permitted to attend any  
22 meeting of these public bodies."

23 A meeting is defined in NRS 241.015(2) as follows:

24 2. "Meeting":

25 (a) Except as otherwise provided in paragraph (b), means:

26 (1) The gathering of members of a public body at which a  
quorum is present to deliberate toward a decision or to take action  
27 on any matter over which the public body has supervision, control,  
jurisdiction or advisory power.

28 (2) Any series of gatherings of members of a public body at  
which:

(I) Less than a quorum is present at any individual  
gathering;



- 1 (II) The members of the public body attending one or more  
2 of the gatherings collectively constitute a quorum; and  
3 (III) The series of gatherings was held with the specific intent  
4 to avoid the provisions of this chapter.  
5 (b) Does not include a gathering or series of gatherings of  
6 members of a public body, as described in paragraph (a), at  
7 which a quorum is actually or collectively present:  
8 (1) Which occurs at a social function if the members do not  
9 deliberate toward a decision or take action on any matter  
10 over which the public body has supervision, control,  
11 jurisdiction or advisory power.  
12 (2) To receive information from the attorney employed or  
13 retained by the public body regarding potential or existing  
14 litigation involving a matter over which the public body has  
15 supervision, control, jurisdiction or advisory power and to  
16 deliberate toward a decision on the matter, or both.

17 An attorney or other staff member meeting collectively with individual members of a Board  
18 may constitute a meeting of the Board, within the definition of the Open Meeting Law, if the  
19 individual meetings were held with the specific intent to avoid the provisions of the Open  
20 Meeting Law and if the members, through the individual meetings, deliberated toward a  
21 decision or took action on any matter over which the Board has supervision, control,  
22 jurisdiction, or advisory power. NRS 241.015(2). See OMLO 2003-11 (March 6, 2003).

23 Applying the above to the instant matter, there is no evidence that the Board, either as  
24 a whole or a quorum, deliberated regarding approval of the development planned by  
25 Mr. Flores prior to the Board meeting on September 21, 2006. Supervisor Staub indicated  
26 that the "we" referred to during his interview was the staff of Carson City involved in planning  
27 and zoning and not the Board of Supervisors. Commissioner Staub stated that he had no  
28 discussions or deliberations with other members of the Board regarding this issue prior to the  
meeting and that the only information he received regarding the request from Mr. Flores came  
in a private briefing by staff. Therefore, there is no evidence to support the allegations made  
regarding a violation of the Open Meeting Law.

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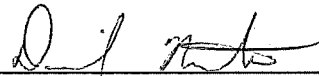
CONCLUSION

The Carson City Board of Supervisors did not violate the Open Meeting Law prior to or during its September 21, 2006 meeting regarding the approval of the Tentative Planned Unit Development application for Clear View Ridge. The Office of the Nevada Attorney General is closing its file on this issue at this time.

DATED this 3<sup>rd</sup> day of December, 2006.

GEORGE J. CHANOS  
Attorney General

By:

  
\_\_\_\_\_  
DAVID W. NEWTON  
Deputy Attorney General  
Nevada State Bar No. 7843  
555 E. Washington, Suite 3900  
Las Vegas, NV 89101  
(702) 486-3898

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 6<sup>th</sup> day of December, 2006, I mailed a copy of the  
4 Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Jean Bondiett  
6 4367 Voltaire Street  
7 Carson City, Nevada 89703

8 Michael T. Suglia  
9 Deputy District Attorney  
10 Carson City District Attorney's Office  
11 885 East Musser Street, Suite 2030C  
12 Carson City, Nevada 89701-4475

13 Carole Brackley  
14 An Employee of the Office of the Attorney General

1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE

4 In the Matter of:

5 LANDER COUNTY HOSPITAL DISTRICT  
6 BOARD OF TRUSTEES

) Attorney General File No. 06-039  
)  
)

7 I.

8 INTRODUCTION

9 In a letter received September 13, 2006, by the Office of the Nevada Attorney General,  
10 Mr. Richard S. Jellicoe filed a complaint with this Office alleging a violation of the Nevada  
11 Open Meeting Law, NRS Chapter 241. In particular, Mr. Jellicoe alleges that the Lander  
12 County Hospital District Board of Trustees (Board) violated the Open Meeting Law by refusing  
13 to place items on the agenda as requested by Mr. Jellicoe.

14 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
15 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
16 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
17 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
18 and audiotape recordings.

19 II.

20 FINDINGS OF FACT

21 The Board is a public body that is subject to the provisions of the Open Meeting Law.  
22 As part of its operating procedures, the Board permits members of the public to submit  
23 agenda items for future Board consideration. The Board uses a form called, "Agenda  
24 Request Form" (Form). The Form specifically states:

25 THE BOARD CHAIRMAN RESERVES THE RIGHT TO REJECT  
26 OR RECOMMEND TABLING ALL AGENDA REQUESTS FOR  
INSUFFICIENT INFORMATION.

27 On August 6, 2006, Mr. Jellicoe made a request to have three distinct items placed on  
28 the agenda. The Board's Chairman refused to place the items on the agenda subsequent to

1 determining they were irrelevant to the Board's usual business. However, Mr. Jellicoe was  
2 informed that he could bring the items up during the public comment portion of the meeting.

3 III.

4 ISSUE

5 Did the Board violate Nevada's Open Meeting Law by refusing to place on its meeting  
6 agenda the items requested by Mr. Jellicoe?

7 IV.

8 CONCLUSIONS OF LAW

9 Although NRS 241.020(2) governs the posting of public notices that must consist of a  
10 clear and complete agenda, the Open Meeting Law does not govern what items must be  
11 placed on an agenda. The Open Meeting Law does not guarantee a member of the public  
12 the right to place whatever he or she desires on the agenda. Here, the Board extends a  
13 courtesy not required by the Open Meeting Law allowing members of the public to request  
14 agenda items. However, the Form also clearly states that an item can be rejected, which is  
15 what occurred in this case. As a result, this Office cannot find a violation of the Open Meeting  
16 Law by the Board.

17 V.


18 CONCLUSION

19 The Lander County Hospital District Board of Trustees did not violate Nevada's Open  
20 Meeting Law, and the Office of the Nevada Attorney General is closing its file on this issue at  
21 this time.

22 DATED this 16<sup>th</sup> day of November, 2006.

23 GEORGE J. CHANOS  
24 Attorney General

25 By:

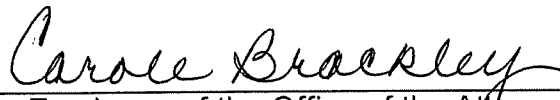
  
26 NEIL A. ROMBARDO  
27 Senior Deputy Attorney General  
28 Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 16<sup>th</sup> day of November, 2006, I mailed a copy of the Findings of  
4 Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Richard S. Jellicoe  
6 86 E. 2<sup>nd</sup> Street  
7 Battle Mountain, NV 89820

8 Jeff Nester, Board Chairman  
9 Lander County Hospital District  
10 535 S. Humboldt Street  
11 Battle Mountain, NV 89820

12   
13 An Employee of the Office of the Attorney General

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**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

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In the Matter of:	)	Attorney General File No. 06-042
BOARD OF HOMEOPATHIC MEDICAL	)	OMLO 2006-12
EXAMINERS and applicable subcommittees	)	

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I.

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**INTRODUCTION**

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In multiple letters received on October 20, 2006, by the Office of the Nevada Attorney General, Dr. Daniel J. Royal filed complaints with this Office alleging various violations of the Nevada Open Meeting Law, NRS Chapter 241. In particular, Dr. Daniel Royal alleges that the Board of Homeopathic Medical Examiners (BHME) and its various subcommittees violated the Open Meeting Law at different meetings by: (1) failing to include the remarks of certain individuals in its minutes, (2) failing to provide requested public notices of subcommittee meetings to Dr. Daniel Royal, and (3) failing to make available for inspection either minutes or audio recordings of meetings within 30 working days of the meeting.<sup>1</sup>

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

II.

**FINDINGS OF FACT**

The complaint alleges that BHME failed to include the remarks of various people in the minutes of meetings ranging from December 20, 2005 through July 22, 2006.<sup>2</sup>

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<sup>1</sup> BHME, at its July 22, 2006 meeting, raised an issue whether it and its various subcommittees had to comply with Nevada's Open Meeting Law. This discussion does not raise an Open Meeting Law issue for purposes of enforcement. However, the law is clear that BHME and its various subcommittees are subject to Nevada's Open Meeting Law.

<sup>2</sup> The complaint states a meeting date of December 20, 2006, but the date of Dr. Daniel Royal's complaint is October 20, 2006, which predates December 20, 2006. Therefore, this Office will presume that the complainant is complaining about the December 20, 2005 meeting.

1 Dr. Daniel Royal requested receipt of public notices for all BHME subcommittees. On  
2 September 26, 2006 and October 3, 2006, BHME NAC Committee and BHME Policy and  
3 Bylaws Committee conducted open meetings. Although Dr. Daniel Royal requested to  
4 receive all public notices for BHME and its subcommittees, neither subcommittee provided  
5 the public notices to Dr. Daniel Royal.

6 BHME conducted a meeting on July 22, 2006. On October 18, 2006, Dr. Daniel Royal  
7 requested minutes of the meeting. The Executive Director provided the minutes of the  
8 meeting on October 19, 2006.

9 **III.**

10 **ISSUE**

11 1. Did BHME violate the Open Meeting Law by failing to include the comments of  
12 various persons in its minutes?

13 2. Did BHME violate the Open Meeting Law by failing to provide requested public  
14 notices of subcommittee meetings to Dr. Daniel Royal?

15 3. Did BHME violate the Open Meeting Law by failing to make available for  
16 inspection either minutes or audio recordings of meetings within 30 working days of the  
17 meeting?

18 **IV.**

19 **CONCLUSIONS OF LAW**

20 1. *Did BHME violate the Open Meeting Law by failing to include the comments of*  
21 *various persons in its minutes?*

22 NRS 241.037(3) provides this Office with a 120-day statute of limitations to bring legal  
23 action. As a policy, this Office will not opine or investigate an allegation that exceeds the  
24 120-day statute of limitations. In this case, Dr. Daniel Royal's complaint was received by this  
25 Office after the expiration of the 120-day statute of limitations for all meetings except for the  
26 July 22, 2006 meeting. However, this Office received Dr. Daniel Royal's complaint 90 days  
27 after the July 22, 2006 meeting. As a result, this Office was unable to determine, prior to the  
28 expiration of the 120-day statute of limitations, whether BHME violated the Open Meeting Law



1 as alleged. Therefore, this Office is closing its file on this issue without further investigation or  
2 opinion.

3 2. *Did BHME violate the Open Meeting Law by failing to provide requested public*  
4 *notices of subcommittee meetings to Dr. Daniel Royal?*

5 NRS 241.020(3)(b)(1)(2) states:

6 3. Minimum public notice is:

7 (b) Providing a copy of the notice to any person who has  
8 requested notice of the meetings of the public body. A request for  
9 notice lapses 6 months after it is made. The public body shall  
10 inform the requester of this fact by enclosure with, notation upon  
11 or text included within the first notice sent. The notice must be:

12 (1) Delivered to the postal service used by the public body not  
13 later than 9 a.m. of the third working day before the meeting for  
14 transmittal to the requester by regular mail; or

15 (2) If feasible for the public body and the requester has agreed to  
16 receive the public notice by electronic mail, transmitted to the  
17 requester by electronic mail sent not later than 9 a.m. of the third  
18 working day before the meeting.

19 Here, it is not disputed that Dr. Daniel Royal requested all public notices of all BHME  
20 subcommittees. It is admitted by BHME's legal counsel that the subcommittees failed to  
21 provide the requested public notices. Therefore, BHME's subcommittees violated the Open  
22 Meeting Law.

23 Although BHME and its various subcommittees have had recent difficulties with  
24 complying with the Open Meeting Law, this Office believes it has taken affirmative steps to  
25 improve its processes and hired a new Executive Director to ensure compliance with the  
26 Open Meeting Law. Therefore, at this time, this Office will not take legal action against  
27 BHME's subcommittees. However, this Office strongly recommends that BHME and its  
28 subcommittees seek immediate advice from legal counsel on any potential Open Meeting  
Law issue as well as training on the Open Meeting Law.

3. *Did BHME violate the Open Meeting Law by failing to make available for*  
*inspection either minutes or audio recordings of meetings within 30 working days of the*  
*meeting?*

///

1 NRS 241.035(2), in pertinent part, states, "[m]inutes or audiotape recordings of the  
2 meetings must be made available for inspection by the public within 30 working days after the  
3 adjournment of the meeting at which taken".

4 Here, Dr. Daniel Royal alleges because he did not receive the minutes or audiotape  
5 recording prior to October 19, 2006, that BHME violated the Open Meeting Law. However,  
6 Dr. Daniel Royal did not request the minutes until October 18, 2006. Therefore, BHME  
7 responded reasonably in providing the minutes on October 19, 2006. There is no evidence  
8 that indicates BHME did not have at least a "draft" of the minutes, or the audiotape recording  
9 of the meeting, available within 30 working days of the meeting. Thus, this Office finds no  
10 violation of the Open Meeting Law by BHME.

11 V.

12 **CONCLUSION**

13 The Office of the Nevada Attorney General finds that the subcommittees of the Board  
14 of Homeopathic Medical Examiners violated the Open Meeting Law by failing to provide the  
15 requested public notice. The Office of the Nevada Attorney General warns the Board of  
16 Homeopathic Medical Examiners and its various subcommittees that future noncompliance  
17 with any provision of the Open Meeting Law may result in litigation. However, at this time, the  
18 Office of the Nevada Attorney General will not pursue litigation with regard to this issue.

19 The Office of the Nevada Attorney General finds that Dr. Daniel Royal's other alleged  
20 violations lack merit.

21 DATED this 29<sup>th</sup> day of December, 2006.

22 GEORGE J. CHANOS  
23 Attorney General

24 By: 

25 for NEIL A. ROMBARDO  
26 Senior Deputy Attorney General  
27 Nevada State Bar No. 6800  
28 100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 5<sup>th</sup> day of January, 2007, I mailed a copy of the Findings  
4 of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Dr. Daniel F. Royal  
6 New Hope Medical LLC  
7 10120 S. Eastern Ave  
8 Suite 100  
9 Henderson, NV 89052

10 Nancy Eklof, Executive Director  
11 Nevada State Board of  
12 Homeopathic Examiners  
13 435 Court Street  
14 Reno, NV 89501

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An Employee of the Office of the Attorney General

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**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

In the Matter of: } Attorney General File No. 06-043  
DEPARTMENT OF PERSONNEL }

I.

**INTRODUCTION**

In a letter received October 20, 2006, by the Office of the Nevada Attorney General, Mr. Ty Robben filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law, NRS Chapter 241. In particular, Mr. Robben alleges that the Department of Personnel Subject Matter Expert meetings violated the Open Meeting Law on August 31, 2006, September 26, 2006, and October 19, 2006, by failing to comply with NRS Chapter 241.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

II.

**FINDINGS OF FACT**

On August 31, 2006, September 26, 2006, and October 19, 2006, the Department of Personnel conducted meetings as a part of the Fiscal Management/Staff Services Information Technology occupational study group. Specifically, these meetings were held to determine the appropriate classification of Mr. Robben's position. Mr. Robben is an employee of the Department of Taxation. The study group considers a number of factors in determining a position's classification. These meetings traditionally do not comply with NRS Chapter 241, and the meetings at issue did not comply with NRS Chapter 241.<sup>1</sup>

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<sup>1</sup> The results of the re-classification are irrelevant to this Open Meeting Law opinion.

1 In this case, the occupational study group involved the following persons: Mr. Robben,  
2 Mr. Robben's supervisor - Mr. Stan Gillie, management and personnel staff from the  
3 Department of Taxation, the Personnel Analysts from the Department of Personnel, and three  
4 Subject Matter Experts (SMEs). It is the role of the SMEs to assist the Personnel Analysts in  
5 evaluating the technical aspects of a position, in this case Mr. Robben's position. The SMEs  
6 and the Personnel Analysts involved in the study group conducting the evaluation were not  
7 appointed by the Personnel Commission as a subcommittee. Further, the final decision  
8 maker regarding a re-classification is the Personnel Analyst responsible for the particular  
9 department from which the position being re-classified is located, in this case, the Department  
10 of Taxation. Depending on the complexity of the classification or re-classification, the  
11 Department of Personnel may use more than one Personnel Analyst to make the final  
12 decision. The role of the SMEs in these meetings was to provide information to the  
13 Personnel Analysts to assist them in making a decision regarding classification. The decision  
14 regarding classification of a position may be appealed to the Director of the Department of  
15 Personnel, and the Director's decision may then be appealed to the Personnel Commission.

16 III.

17 ISSUE

18 Were the subject matter expert meetings held by the Department of Personnel subject  
19 to the Nevada Open Meeting Law?

20 IV.

21 CONCLUSIONS OF LAW

22 NRS 241.015(3) defines "public body," in pertinent part as:

23 [A]ny administrative, advisory, executive or legislative body of the  
24 State or a local government which expends or disburses or is  
25 supported in whole or in part by tax revenue or which advises or  
26 makes recommendations to any entity which expends or disburses  
or is supported in whole or in part by tax revenue, including, but  
not limited to, any board, commission, committee, subcommittee  
or other subsidiary thereof . . . .

27 Section 3.01 of NEVADA'S OPEN MEETING LAW MANUAL states that the term "body"  
28 connotes more than one person coming to a collective consensus to obtain a decision, "all of

1 which indicates a fundamental assumption that the Open Meeting Law concerns itself only  
2 with collegial bodies.” A. Schwing, OPEN MEETING LAWS, §6.32 (1994). For purposes of the  
3 Open Meeting Law, this Office has always maintained that a “collegial body” is a body  
4 consisting of more than one person sharing equal voting power. NEVADA’S OPEN MEETING LAW  
5 MANUAL, § 3.01 (10th ed. 2005). This Office previously opined that the Open Meeting Law  
6 does not apply to the Governor when he is acting in his official executive capacity because  
7 the Governor is not a multi-member body. Op. Nev. Att’y Gen. No. 61–241 (August 24,  
8 1961).

9 Here, the study group did not, and is not required to, build a consensus of all attendees  
10 at the meeting to make a decision. In this case, the final decision maker is the Personnel  
11 Analyst from the Department of Personnel. Although the SMEs provide input, the ultimate  
12 decision maker is the responsible Personnel Analyst.

13 Although more than one Personnel Analyst participated in the study group at issue,  
14 that does not transform the study group into a public body for purposes of the Open Meeting  
15 Law. In effect, the meetings conducted by the study group are equivalent to a meeting of the  
16 Department of Personnel staff. This point is further illustrated by the fact that the final  
17 decision may be appealed to the Director of the Department of Personnel, and the Director’s  
18 decision may be appealed to the Personnel Commission. Therefore, the study group is not a  
19 public body as defined in NRS 241.015(3), and as a result, it does not have to comply with  
20 Nevada’s Open Meeting Law.

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V.

CONCLUSION

A Department of Personnel study group regarding classification of a position is not a public body for purposes of the Open Meeting Law. As a result, the Office of the Nevada Attorney General is closing its file on this issue at this time.

DATED this 20th day of December, 2006.

GEORGE J. CHANOS  
Attorney General

By:   
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

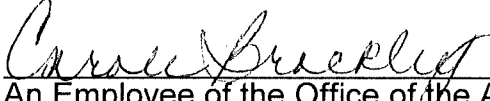
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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 21st day of December, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Mr. Ty Robben  
610 Mary Street  
Carson City, NV 89703

Jeanne Greene, Director  
Department of Personnel  
209 E. Musser St., Room 101  
Carson City, NV 89701-4204

  
An Employee of the Office of the Attorney General





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III.

ISSUE

Did the Board violate the Open Meeting Law by providing a copy of the audio recording 37 working days after the meeting?

IV.

CONCLUSIONS OF LAW

NRS 241.035(2), in pertinent part, states, "minutes or audiotape recordings of the meetings must be made available for inspection by the public within 30 working days after the adjournment of the meeting at which taken." [Emphasis added.]

Here, the Board did provide the audiotape recording after the 30-working day requirement in NRS 241.035(2). However, NRS 241.035(2) permits the public body to make the "minutes or audiotape recordings . . . available for inspection by the public within 30 working days" of the meeting. [Emphasis added.] Since the Board's minutes were made available to the public 16 working days after the meeting, the Board complied with NRS 241.035(2) and did not violate the Open Meeting Law.


V.

CONCLUSION

The Verdi Citizen Advisory Board did not violate the Open Meeting Law, and the Office of the Nevada Attorney General is closing its file on this issue at this time.

DATED this 20th day of December, 2006.

GEORGE J. CHANOS  
Attorney General

By:   
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, NV 89701-4717  
(775) 684-1205

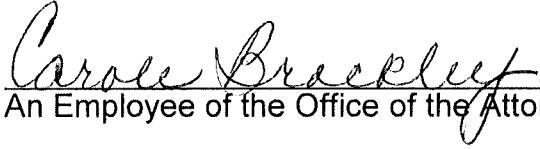
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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 21st day of December, 2006, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Mr. Gary Feero  
P.O. Box 20292  
Reno, NV 89515-0292

Blaine E. Cartlidge, Esq.  
Deputy District Attorney  
Office of the Washoe County  
District Attorney  
P.O. Box 30083  
Reno, NV 89520-3083

  
An Employee of the Office of the Attorney General



1 Board counsel admits that the Review Committee and Fiscal/Financial Committee,  
2 both subcommittees of the Board, failed to provide the requested notices of the September  
3 2006 meetings of the Committees. However, the Board presented evidence that it has  
4 provided Mr. Gentry with notices of the Board meetings since the previous violation.

5 III.

6 ISSUE

7 Did the Board violate the Open Meeting Law by failing to provide the requested public  
8 notices to Mr. Gentry?

9 IV.

10 CONCLUSIONS OF LAW

11 NRS 241.020, in pertinent part, states:

12 3. Minimum public notice is:

- 13 (a) . . . . .  
14 (b) Providing a copy of the notice to any person who has  
15 requested notice of the meetings of the public body. A request for  
16 notice lapses 6 months after it is made. The public body shall  
17 inform the requester of this fact by enclosure with, notation upon  
18 or text included within the first notice sent.

19 Here Board counsel admits that the Review Committee and the Fiscal/Financial  
20 Committee failed to timely provide the public notices for the September meetings of these  
21 public bodies. However, the Board complied with the Open Meeting Law in that it provided  
22 the requested public notices in a timely fashion since the previous complaint. Since the  
23 Review Committee and the Fiscal/Financial Committee are separate public bodies from the  
24 Board for purposes of the Open Meeting Law, this Office will not pursue litigation against the  
25 Board for the subcommittees' failures. Further, this is the first violation of the Open Meeting  
26 Law by these two subcommittees, and as a result, at this time this Office will not pursue  
27 litigation against either subcommittee. However, this Office renews its previous admonition to  
28 the Board and all of its subcommittees that it must provide Mr. Gentry with all public notices in  
a timely fashion pursuant to NRS 241.020.

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V.

**CONCLUSION**

The State Board of Homeopathic Medical Examiners did not violate the Open Meeting Law. However, its subcommittees, the Review Committee and the Fiscal/Financial Committee did violate the Open Meeting Law. As a result, the Office of the Nevada Attorney General advises the State Board of Homeopathic Medical Examiners and its various subcommittees to timely provide public notices pursuant to NRS 241.020.

DATED this 29 day of December, 2000.

GEORGE J. CHANOS  
Attorney General

By: 

NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 5<sup>th</sup> day of January, 2007, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Robert K. Gentry, Executive Director  
Nevada Institutional Review Board  
10624 South Eastern Ave  
Suite A-006  
Henderson, NV 89052

Nancy Eklof, Executive Director  
Nevada State Board of  
Homeopathic Examiners  
435 Court Street  
Reno, NV 89501

  
An Employee of the Office of the Attorney General

1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE

4 In the Matter of:

Attorney General File No. 06-048

5 }  
6 ELKO COUNTY SCHOOL DISTRICT BOARD }  
OF TRUSTEES }

7 I.

8 INTRODUCTION

9 In a letter received November 20, 2006, by the Office of the Nevada Attorney General,  
10 Ms. Penny Poché filed a complaint with this Office alleging a violation of the Nevada Open  
11 Meeting Law, NRS Chapter 241. In particular, Ms. Poché alleges that the Elko County School  
12 District Board of Trustees (Board) violated the Open Meeting Law at its October 10, 2006  
13 meeting by having an unclear and incomplete consent agenda statement on its agenda.<sup>1</sup>

14 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
15 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
16 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
17 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
18 and audiotape recordings.

19 II.

20 FINDINGS OF FACT

21 On October 10, 2006, the Board conducted a meeting. Item 9 on the agenda was  
22 listed as the consent agenda item and stated:

23 Consent Agenda. Information concerning the following consent  
24 agenda items has been forwarded to each Board member for  
25 study prior to this meeting. Unless a Board member or visitor in  
26 the audience has a question concerning a particular item and asks  
27 that it be withdrawn from the consent list, the items are approved  
28 at one time by the Board of Trustees.

<sup>1</sup> Ms. Poché's complaint alleges other issues concerning the Board. However, these issues do not  
involve the Open Meeting Law, and as a result, this opinion is limited to the Open Meeting Law.



1 During the consent agenda item at the October 10, 2006 meeting, the Board voted to approve  
2 several items including changing the graduation date concerning Spring Creek High School.

3 The Board maintains a website, and on that website, a member of the public may  
4 access a link on the consent agenda item that will indicate the content of the consent agenda.  
5 However, the Board's publicly posted agendas do not contain any information regarding the  
6 topics to be considered on the consent agenda.

7 III.

8 ISSUE

9 Did the Board violate the Open Meeting Law by failing to properly notice the consent  
10 agenda item?

11 IV.

12 CONCLUSIONS OF LAW

13 NRS 241.020(2)(c)(1) states:

14 2. Except in an emergency, written notice of all meetings must  
15 be given at least 3 working days before the meeting. The notice  
16 must include:

17 (c) An agenda consisting of:

18 (1) A clear and complete statement of the topics scheduled to be  
considered during the meeting.

19 Section 7.02 of the Nevada Open Meeting Law Manual states, "[a]genda items must be  
20 described with clear and complete detail so that the public will receive notice in fact of what is  
21 to be discussed by the public body." See NEVADA OPEN MEETING LAW MANUAL, § 7.02, at 55  
22 (10th ed. 2005). In *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003), the  
23 Nevada Supreme Court considered the "clear and complete" requirement found in  
24 NRS 241.020(2)(c)(1). The Court stated, "Nevada's Open Meeting Law seeks to give the  
25 public clear notice of the topics to be discussed at public meetings so that the public can  
26 attend a meeting when an issue of interest will be discussed." *Id.* at 155, 67 P.3d at 906.

27 Here the Board's consent agenda item does not provide any information with regard to  
28 the content of the items that may be at issue under the consent agenda. Although a member

1 of the public may discover the content of the consent agenda on the Board's website, the  
2 Board's obligation to provide a "clear and complete" agenda statement on the posted public  
3 notice is still required. As a result, the Board violated the Open Meeting Law by failing to  
4 provide clear and complete notice of the items that make up the consent agenda, in violation  
5 of NRS 241.020(2)(c)(1).

6 As a result of the Board's violation, this Office strongly suggests that the Board  
7 reconsider the consent agenda of the October 10, 2006 meeting. The Board's failure to  
8 comply with the suggested course of action may result in litigation between this Office and the  
9 Board.

10 V.

11 CONCLUSION

12 The Elko County School District Board of Trustees violated Nevada's Open Meeting  
13 Law by failing to have a "clear and complete" consent agenda statement on its October 10,  
14 2006 publicly posted agendas. The Office of the Nevada Attorney General expects the Elko  
15 County School District Board of Trustees to properly post and reconsider the items on the  
16 consent agenda of the October 10, 2006 meeting prior to February 6, 2007.

17 DATED this 9<sup>th</sup> day of January, 2007.

18 CATHERINE CORTEZ MASTO  
19 Attorney General

20  
21 By 

22 KEITH D. MARCHER  
23 Senior Deputy Attorney General  
24 100 North Carson Street  
25 Carson City, Nevada 89701-4717  
26 (775) 684-1205  
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**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**

In the Matter of:

THE NEVADA STATE BOARD OF  
HOMEOPATHIC MEDICAL EXAMINERS

}

Attorney General File No. 06-049

**I.**

**INTRODUCTION**

In a letter received November 27, 2006, by the Office of the Attorney General, Daniel F. Royal, D.O., H.M.D., J.D., filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law, NRS Chapter 241. In particular, Dr. Royal alleges that the Nevada State Board of Homeopathic Medical Examiners (Board) violated the Open Meeting Law at its November 16, 2006 meeting by failing to allow Dr. Royal to telephonically participate in the meeting. Dr. Royal is a member of the Board.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, and supporting documents.

**II.**

**FINDINGS OF FACT**

On November 16, 2006, the Board conducted a properly noticed meeting pursuant to NRS Chapter 241. The meeting was noticed as a telephone conference meeting held between two locations in Las Vegas and Reno, Nevada. Dr. Royal, a Board member located in Henderson, Nevada, requested to telephone into the meeting to participate instead of appearing at the noticed location in Las Vegas. This request was denied by Board staff based on the fact that Dr. Royal has previously failed to follow board procedures located in its bylaws regarding telephonically participating in a meeting.

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III.

ISSUE

Did the Boards staff's refusal to allow Dr. Royal to telephonically participate in a meeting violate NRS Chapter 241?

IV.

CONCLUSIONS OF LAW

NRS 241.020(1) reads in part:

Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies.

Dr. Royal was not foreclosed from attending the meeting at the location in Las Vegas and participating in person. The decision on behalf of Board staff to disallow Dr. Royal from participating in the meeting telephonically based on his past practices does not equate to an Open Meeting Law violation. During a teleconference meeting, the Board is only required to ensure that the public has access to a meeting location where they may appear to listen to the discussions and votes of the Board and to offer public comment. NEVADA OPEN MEETING LAW MANUAL, § 5.05, at 55 (10<sup>th</sup> ed. 2005). The Open Meeting Law does not require the Board to allow members of the public to call in telephonically to participate in a meeting. Members of the public who want to attend a meeting are required to appear at the noticed locations. That same standard is applicable to Board members who wish to attend a meeting when the meeting location is physically accessible.

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V.

CONCLUSION

The Nevada State Board of Homeopathic Medical Examiners did not violate the Open Meeting Law at its November 16, 2006 meeting. The Office of the Nevada Attorney General is closing its file on this issue at this time.

DATED this 2<sup>st</sup> day of February, 2007.

CATHERINE CORTEZ MASTO  
Attorney General

By: George H. Taylor


GEORGE H. TAYLOR  
Senior Deputy Attorney General  
Nevada State Bar No. 3615  
100 North Carson Street  
Carson City, NV 89701-4717  
(775) 684-1230

1 **CERTIFICATE OF MAILING**

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 1st day of February, 2007, I mailed a copy of the Findings  
4 of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

5 Nancy Eklof, Executive Director  
6 Nevada State Board of Homeopathic  
7 Medical Examiners  
8 435 Court Street  
9 Reno, NV 89501

10 Daniel F. Royal, D.O., H.M.D., J.D.  
11 New Hope Medical LLC  
12 10120 S. Eastern Ave., Suite 100  
13 Henderson, NV 89052

14   
15 An Employee of the Office of the Attorney General

1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL

3 In the Matter of:

4 CITY OF BOULDER CITY COUNCIL

Attorney General File No. 06-050

6 I.

7 COMPLAINT

8 This Office received a complaint from Mr. Sherman Rattner on November 27, 2006  
9 alleging various violations of the Open Meeting Law (OML) by the Boulder City Council  
10 (Council) at its November 14, 2006 meeting. In addition to allegations of OML violations  
11 during the November 14, 2006 meeting, Mr. Rattner also urges this Office to reopen AG File  
12 No. 06-026, a complaint that was administratively closed without any action by this Office.  
13 Because this Office concludes no violation of the OML occurred during the November 14,  
14 2006 meeting of the Council and because Mr. Rattner's request to revisit a closed file, which  
15 he asserts is related to the instant "new claim," would not materially advance the instant  
16 complaint, this Office will not revisit nor reconsider File No. 06-026.

17 Mr. Rattner's "new claim" is based upon his allegation that open meeting law violations  
18 occurred during the Council's November 14, 2006 meeting in Boulder City, Nevada. He  
19 alleges the supporting materials made available for the public in support of Item No. 17 were  
20 defective as they did not provide the specific questions the City Manager did, in fact, ask  
21 during the Board's discussion of Item No. 17 during the meeting.

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1 Mr. Rattner also alleges that he was prevented from speaking during public comment  
2 on this agenda item in violation of NRS 241.020(2).<sup>1</sup> Following the Council's discussion of  
3 Item No. 17, Mr. Rattner alleges he was "immediately blocked from making any comments on  
4 the subject prior to even completing even a single sentence." See complaint at 8.  
5 Furthermore, Mr. Rattner alleges that as he attempted to speak about specific ballot  
6 questions proposed by the City Manager, he was again blocked from commenting on the  
7 issue.

8 The Office of the Nevada Attorney General has primary jurisdiction to investigate  
9 alleged violations of the Nevada Open Meeting Law. (This Office may seek to remedy  
10 violations which its investigation reveals to have occurred by seeking relief in district court to  
11 set aside a public body's illegal action. Injunctive relief, fines, and criminal penalties may be  
12 sought and/or assessed against public bodies which have shown disregard for the law.)

13 In reviewing this complaint, the videotape and audiotape of the November 14, 2006  
14 Council meeting were reviewed. The approved minutes of the meeting were also reviewed as  
15 well as supporting documentation for the Item at issue in the complaint. In addition, this Office  
16 considered the voluminous allegations in the Complaint, Boulder City's Position Statement  
17 submitted by the City Attorney, and the Complainant's supplemental Reply to Boulder City's  
18 Position Statement dated January 17, 2007.

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21 \_\_\_\_\_  
22 <sup>1</sup> NRS 241.020(2) states:

23 "2. Except in an emergency, written notice of all meetings must be given at least 3  
24 working days before the meeting. The notice must include:

- 25 (a) The time, place and location of the meeting.  
26 (b) A list of the locations where the notice has been posted.  
27 (c) An agenda consisting of:

28 (1) A clear and complete statement of the topics scheduled to be considered during  
the meeting.

(2) A list describing the items on which action may be taken and clearly denoting that  
action may be taken on those items.

(3) A period devoted to comments by the general public, if any, and discussion of  
those comments. No action may be taken upon a matter raised under this item of the agenda until  
the matter itself has been specifically included on an agenda as an item upon which action may  
be taken pursuant to subparagraph (2)."

1 II.

2 ISSUES

3 A. Whether the Boulder City Council's agenda Item No. 17 provided a "clear and  
4 complete" statement of the topics scheduled to be considered during the meeting?

5 B. Whether the Council's action concerning Mr. Rattner's attempt to discuss  
6 initiative and referendum, immediately following the Council's discussion of Item No. 17, was  
7 a violation of the OML?<sup>2</sup>

8 III.

9 FACTS

10 The Council agenda for its November 14, 2006 meeting was properly noticed and  
11 published. Item No. 17 on the Agenda offered the following for discussion, "Discussion and  
12 possible staff directive regarding ballot questions for the 2007 Boulder City Municipal  
13 Election." The support materials provided to the public and the Council for Item No. 17  
14 requested "that the City Council review a ballot question timeline [prepared by the City  
15 Manager's staff] for the 2007 Municipal Election and direct staff accordingly in preparation for  
16 possible ballot questions in the upcoming election." Support materials identified these items  
17 for discussion at the meeting. Nowhere in the support materials is it indicated that there  
18 would be a vote on specific ballot questions, and in fact, the Council did not take action on  
19 specific ballot questions presented under this agenda item. The agenda item clearly called  
20 only for discussion of possible ballot questions to be solicited by staff from the Council and  
21 the public.

22  
23  
24 <sup>2</sup> Mr. Rattner alleges, in addition to these two alleged violations, that his First and Fourteenth  
25 Amendment rights to free speech and equal protection of the laws under the U.S. Constitution were infringed by  
26 Council's actions. He also alleged that the "denominationally specific invocation" at the beginning of the meeting  
27 were a violation of the First Amendment and Council's own rules. This Office's jurisdiction of the Council extends  
28 only to enforcement of the OML. Mr. Rattner's allegations are not encompassed by the Open Meeting Law  
except to the extent that the public body restricted public comment based on the viewpoint of the speaker. The  
public body must be viewpoint neutral and must allow dissenting views to be expressed as long as the speaker  
does not disrupt the meeting. Having viewed the video of the meeting, there is clearly no indication that the public  
body was at all concerned about Mr. Rattner's viewpoint or his comments. They simply pointed out that his  
speech was not germane to the agenda item. Council's action is permitted by the OML and indeed is required  
under the Supreme Court's interpretation of "clear and complete" in *Sandoval v. Regents*, 119 Nev. 148 (2003).

1 Mr. Rattner asked to speak on this agenda item. Following the City Manager's  
2 presentation, the Mayor recognized Mr. Rattner. Mr. Rattner began speaking about the  
3 initiative and referendum process. After about a minute into Mr. Rattner's speech, the Mayor  
4 interrupted him and informed him that his comments were not related to the agenda item. He  
5 was invited to make comments regarding initiative and referendum at the conclusion of the  
6 meeting during public comment. The video reviewed by this Office clearly shows that Mr.  
7 Rattner was not immediately blocked from making any comments on the subject prior to  
8 completing even a single sentence, as he alleges in his complaint. The Council listened to  
9 more than a minute of comments regarding initiative and referendum before interrupting him.

10 After more discussion, also involving the City Manager, the Mayor refused to let  
11 Mr. Rattner proceed with any further comments. The video of this colloquy among these  
12 three persons reveals that Mr. Rattner was argumentative even after the Mayor and the City  
13 Manager explained politely that Mr. Rattner's comments were not germane to the agenda  
14 item. Mr. Rattner threatened to report the Council for OML (for refusing to let him speak) and  
15 only sat down after the Mayor sternly refused to let him proceed.

16 Mr. Rattner did speak during public comment at the conclusion of the Council's  
17 agenda.

#### 18 IV.

### 19 CONCLUSIONS OF LAW

#### 20 **First Issue of Law**

21 *Whether Item No. 17 was "Clear and Complete"*  
22 *within meaning of NRS 241.020?*

23 This Office has reviewed the agenda and supporting materials for Item No. 17. Neither  
24 the agenda nor the supporting documentation indicate or suggest that a vote upon specific  
25 ballot questions for the general election would be taken. The agenda is clear and complete as  
26 it adequately informs the general public that Council's staff wanted to initiate a discussion on  
27 possible ballot questions and to remind Council of the election timeline so that matters would  
28 be timely considered.

1 The fact that staff suggested three questions to the Council to initiate discussion did  
2 not prevent the Council members or the public from suggesting their own questions. Mr.  
3 Rattner was free to suggest questions. Even though these three questions were not supplied  
4 to the public in the supporting materials, that was not a violation of the "clear and complete"  
5 rule.<sup>3</sup> We do not believe the three questions the City Manager presented to the Council were  
6 necessary to be included in supporting materials since the agenda adequately defined the  
7 topic. The three questions were simply three of many possible ballot questions the Council  
8 could have drafted or discussed. The topic on the agenda was "ballot questions." The City  
9 Manager solicited other possible questions from the Council, and she made it plain that a vote  
10 upon the three questions she presented was unnecessary as the matter would be on the  
11 agenda at the next scheduled meeting in December.

12 Mr. Rattner was informed by both the Mayor and the City Manager that if he had  
13 questions related to the agenda topic—"ballot questions"—he would be heard, but he could not  
14 be heard discussing matters not germane to the topic at issue.

15 **Second Issue of Law**

16 *Whether the Council's action preventing Mr. Rattner from Discussing*  
17 *Initiative and Referendum under Item No. 17 was a violation of the OML?*

18 The Nevada Supreme court specifically rejected the "germane" standard when  
19 determining whether the scope of agenda items discussed during a public body's meeting  
20 complied with NRS 241.020(2)(c).<sup>4</sup> Mr. Rattner's attempt to comment on the initiative and  
21 referendum process during the Council's consideration of Item No. 17 was beyond the scope

22 \_\_\_\_\_  
23 <sup>3</sup> NRS 241.020(2)(c) requires only that the agenda provide a clear and complete statement of the topics  
to be considered during the meeting.

24 <sup>4</sup> The Nevada Supreme Court in *Sandoval v. Regents*, 119 Nev. 148, 154 stated:  
25 [The Legislature evidently enacted NRS 241.020(2)(c)(1) to ensure that the public is on  
26 notice regarding what will be discussed at public meetings. By not requiring strict  
27 compliance with agenda requirements, the "clear and complete" standard would be  
28 rendered meaningless because the discussion at a public meeting could easily exceed  
the scope of a stated agenda topic, thereby circumventing the notice requirement.  
Accordingly, we reject the "germane standard," as it is more lenient than the Legislature  
intended. Instead, we conclude that the plain language of NRS 241.020(2)(c)(1) requires  
that discussion at a public meeting cannot exceed the scope of a clearly and completely  
stated agenda topic.]

1 of the agenda item. The video of the meeting reveals that Mr. Rattner believed, in good faith,  
2 that the comments he wanted to make were related to the agenda item, nevertheless, the  
3 Mayor was correct to insist that Mr. Rattner's comments be reserved until the public comment  
4 period at the end of the meeting.

5 Furthermore, the OML does not mandate that members of the public be allowed to  
6 speak during meetings until the public body reaches the public comment section of the  
7 agenda. Public bodies may allow comment during specific agenda items, but it is not a  
8 requirement of the OML.

9 V.

10 **CONCLUSION**

11 Boulder City Council's agenda Item No. 17 was a clear and complete statement of the  
12 topic to be discussed. The City Manager's questions for the Council were offered as  
13 suggestions for their consideration. The Council did comment on the suggested questions as  
14 well as acknowledge the election timeline for ballot questions. The item was for discussion  
15 only and no action was taken. Mr. Rattner's comments during consideration of Item No. 17  
16 were beyond the scope of the agenda item, even though it is evident Mr. Rattner believed that  
17 his comments were germane to the item. No violation of the OML occurred during  
18 consideration of Item No. 17.

19 Mr. Rattner was not excluded from speaking at the meeting, so no violation of the OML  
20 occurred. He was recognized to speak during the item discussion, but when he strayed off  
21 the topic, the Mayor and City Manager tried to correct the situation by defining the issues for

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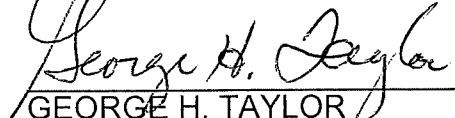
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1 discussion. Mr. Rattner refused to acknowledge that his comments were not germane, so he  
2 was asked to reserve them for public comment at the end of the meeting. Council's action  
3 was not a violation of the OML.

4 DATED this 1<sup>st</sup> day of May, 2007.

5 CATHERINE CORTEZ MASTO  
6 Attorney General

7 By:



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1 CERTIFICATE OF MAILING

2 I hereby certify that I am employed by the Office of the Attorney General of the State of  
3 Nevada, and that on this 1st day of May, 2007, I mailed a copy of the foregoing  
4 Findings of Fact and Conclusions of Law, by placing true copies in the U.S. Mail addressed  
5 to:

6 David R. Olsen, Esq.  
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13 Carole Beasley  
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