



AARON D. FORD
Attorney General

KYLE E.N. GEORGE
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General

JESSICA L. ADAIR
Chief of Staff

RACHEL J. ANDERSON
General Counsel

HEIDI PARRY STERN
Solicitor General

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 East Washington Avenue, Ste. 3900
Las Vegas, Nevada 89101

August 24, 2020

Via U.S. Mail and Electronic Mail

Neal Jones



**Re: Nye County Board of County Commissioners –
Open Meeting Law Complaint, O.A.G. File No. 13897-342**

Dear Mr. Jones:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging a violation of the Open Meeting Law (“OML”) by the Nye County Board of County Commissioners (“Board”). First, your Complaint alleges that Board voted on a motion at the August 20, 2019 meeting, agenda item No. 33, which was not part of the agenda. Your Complaint then alleges that the Board violated NRS 244.360(1) by not having the public nuisance hearing within the 30-40 day requirement. Finally, your Complaint alleges that Commissioner Wichman has made misleading statements to the public during public meetings.

The OAG has statutory enforcement powers under the OML and the authority to investigation and prosecute violations of the OML.¹ The OAG’s investigation of the Complaint included a review of the following: the Complaint, the Response to the Complaint from Nye County Board of County Commissioners, the Board’s August 20, 2019 agenda, the Board’s August 30, 2019 agenda, the Board’s September 17, 2019 agenda, video of agenda item No. 33 at the Board’s August 20, 2019 meeting and video of agenda item No. 5 at the Board’s August 30, 2019 meeting.

¹ See NRS 241.037; NRS 241.039 and NRS 241.040.

FACTUAL BACKGROUND

The Board is a “public body” as defined in NRS 241.015(4) and is subject to the OML. On August 23, 2019 you stated concerns with the Board’s motion and voting at the August 20, 2019 meeting, agenda item No. 33, as you claim the motion was not part of the agenda. Your Complaint then alleges that the Board violated NRS 244.360(1) by not having the public nuisance hearing within the 30-40 day requirement. Finally, your Complaint alleges that Commissioner Wichman has made misleading statements to the public during public meetings.

DISCUSSION AND LEGAL ANALYSIS

1. Applicable Laws and Opinions

The Open Meeting Law concerns itself with meetings, gatherings, decisions, and actions obtained through the collective consensus of a quorum of the public body membership.²

2. Analysis

Your Complaint includes three alleged violations. They are: that the action taken by the Board regarding item No. 33 on the August 20, 2019 agenda was not allowed, that the Board did not comply with NRS 244.360(1) and that Commissioner Wichman has made misleading statements to the public during public meetings. As the second and third allegations are not violations of the OML, they will not be discussed.

Your Complaint alleges that the Board voted on a motion at the August 20, 2019 meeting, agenda item No. 33, which was not part of the agenda. The motion in question was to request that the District Attorney review whether the Board had standing to handle the nuisance complaint as found in agenda item No. 33. To determine if the Board’s actions exceeded the scope of the agenda, it must be determined if the Board’s action fell into the agenda statement.

The Nevada Supreme Court has recognized that “[b]y not requiring strict compliance with agenda requirements, the ‘clear and complete’ standard would be rendered meaningless because the discussion at a public meeting could easily exceed the scope of a stated agenda topic, thereby circum-

² See also *Dewey v. Redevelopment Agency*, 119 Nev. 87, 64 P.3d 1070 (2003) (collective process of decision making must be accomplished in public).

venting the notice requirement.” Accordingly, “discussion at a public meeting cannot exceed the scope of a clearly and completely stated agenda.”³

In this case, item No. 33 of the August 20, 2019 agenda of the Nye County Board of Commissioners⁴ stated:

33. For Possible Action – Discussion and deliberation pursuant to NRS 244.360(5) to: 1) direct the District Attorney to notify the person responsible for the nuisance to abate said nuisance as set forth in the complaint received by the County Clerk on August 8, 2019, regarding the high nitrate levels in the water in Belmont, Nevada, and the wells that were drilled there illegally, and a) determine and specify a reasonable time for the person to abate said nuisance and b) direct the District Attorney to bring legal proceedings for abatement of said nuisance if the notice to the person responsible fails to abate said nuisance; or, in the alternative 2) pursuant to NRS 244.360(1) and 244.360(2), direct the Clerk to set a public hearing not less than 30 nor more than 40 days subsequent to the filing of the complaint.

Here, the public was informed that there would be discussion and possible action regarding a nuisance complaint. The public was further informed that the nuisance complaint was regarding “high nitrate levels in the water inn Belmont, Nevada and the wells that were drilled there illegally.” During the discussion for this agenda item, Commissioner Wichman made a motion to ask the District Attorney’s office to research whether the Board had standing to handle the nuisance complaint. Commissioner Wichman specifically mentioned the fact that the complaint dealt with water and septic issues as a reason for this request. This is an entirely appropriate action and does not violate the OML. Public bodies are recommended to discuss issues with their attorneys and so it is in no way a violation for a public body to request their attorney research an issue for it before the public takes an action.

Pursuant to NRS 241.020(2)(d)(6)(III), a “public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.” This would include during a public meeting as was done in this case.

³ Schmidt v. Washoe County, 123 Nev. 128, 138, 159 P.3d 1099, 1106 (2007), abrogated by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 181 P.3d 670 (2008).

⁴ See Exhibit A.

CONCLUSION

Based on a review of the Complaint, the Response to the Complaint from the Nye County Board of County Commissioners, and the other agenda items and videos, the OAG has determined that the Board's actions did not violate the OML. The Nye County Board of Commissioners' action of requesting that the District Attorney research whether it had the authority to handle the nuisance application is not a violation of the OML. The allegations that the Nye County Board of Commissioners' did not comply with NRS 244.360(1) by not having the public nuisance hearing within the 30-40 day requirement and the allegation that Commissioner Wichman has made misleading statements to the public during public meetings are not violations of the OML. Having determined that no violation of the OML occurred, the OAG will close the file regarding this matter.

AARON D. FORD
Attorney General

By: /s/ David M. Gardner
DAVID M. GARDNER
Senior Deputy Attorney General

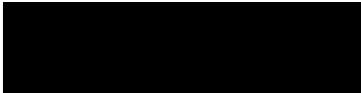
cc: Marla Zlotek, Esq., Counsel to
Nye County Board of County
Commissioners

Neal F. Jones
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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August, 2020, I mailed the foregoing letter by depositing a copy of the same in the U.S. mail, properly addressed, postage prepared, first place mail, to the following:

Neal Jones



Marla Zlotek, Esq.
Nye County District Attorney
P.O. Box 39
Pahrump, NV 89041

/s/ Debra Turman
An employee of the State of Nevada
Office of the Attorney General