

AARON D. FORD
Attorney General

CRAIG A. NEWBY
First Assistant Attorney General

CHRISTINE JONES BRADY
Second Assistant Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave. Suite 3900
Las Vegas, Nevada 89101

TERESA BENITEZ-
THOMPSON
Chief of Staff

LESLIE NINO PIRO
General Counsel

HEIDI PARRY STERN
Solicitor General

January 16, 2024

Via U.S Mail and Email

JayDee Porrás-Grant



**Re: Open Meeting Law Complaint, OAG File No. 13897-457
Mineral County Board of Commissioners**

Dear Mr. Porrás-Grant:

The Office of the Attorney General (“OAG”) is in receipt of your complaint (“Complaint”) alleging violations of the Open Meeting Law (“OML”) by the Mineral County Board of Commissioners (“Board”) regarding the Board’s August 24, 2022, meeting.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The OAG’s investigation of the Complaint included a review of the Complaint; the Response on behalf of the Board; and the agenda and video recording for the Board’s August 24, 2022, meeting. After investigating the Complaint, the OAG determines that the Board did not violate the OML as alleged in the Complaint.

FACTUAL BACKGROUND

The Walker Lake Golf Course, owned by the U.S. Army Corps of Engineers along with the Hawthorne Army Depot, is the only golf course and one of the few publicly accessible green spaces within Mineral County. A new contractor took over operations of the Hawthorne Army Depot on July 1, 2022, and at some point thereafter in July closed the golf course and ceased watering the grass. On or about August 22, 2022, the contractor informed the U.S.

Government that it would not sign a lease for the golf course. Mineral County staff was made aware of this the same day. On or about August 23, County staff determined Board approval was necessary prior to any action on the golf course, including expenditure of public funds.

On August 24, 2022, between 7 and 8 a.m., the Mineral County Clerk posted a public notice agenda for an emergency meeting of the Board to be held that day at 10 a.m. Notice of the meeting was posted to six physical locations, the County's website and the County's Facebook page prior to 8 a.m. The meeting was held in person at the Mineral County Courthouse, with virtual and telephonic access provided to the public in addition. The sole substantive item on the agenda read:

3. Kyle Isom, Recreation and Community Development Director – For consideration and possible action relative to Mineral County providing water, at County expense, to water the greens and/or fairways of the Walker Lake Golf Course to preserve the course. (Public comment following).

On August 24, 2022, at 10 a.m., the Board conducted the emergency meeting. The Board received a brief introduction to the issue and the item from Kyle Isom which included information that if the grass was not watered immediately, the grass would die. Mr. Isom explained that if the grass died, it would be too costly to replace and the community would lose the use of the golf course entirely. The Board's discussion on the item centered around what caused the situation to arise and what the County's options were specifically with respect to getting the grass watered in the short term. Actions considered were focused on addressing the issue until the next regularly scheduled Board meeting, which was a few weeks later. A motion was made to authorize Mr. Isom to enter into a contract to have the grass watered at the County's expense, public comment was accepted on the issue, and the motion passed. The meeting was then adjourned.

The Complaint alleges the purpose of the meeting was not an emergency and as such, it violated the OML.

LEGAL ANALYSIS

The Mineral County Board of Commissioners, as the governing body of a Nevada county, is a public body as defined in NRS 241.015(4) and is subject to the OML.

All meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of a public body. NRS 241.020(1). Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. NRS 241.020(3). As used in the OML, the term “emergency” means “an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) [d]isasters caused by fire, flood, earthquake or other natural causes; or (b) [a]ny impairment to the health and safety of the public.” NRS 241.020(12).

It is undisputed that the notice for the August 24 meeting was not posted 3 working days prior to the meeting. The issue in this instance is whether the need to water the golf course was an unforeseen circumstance requiring immediate action sufficient to constitute an “emergency” under the OML as it was neither a natural disaster nor an impairment to the health and safety of the public.

The OAG has not previously opined on what constitutes an “emergency” under NRS 241.020(12) nor have Nevada courts. Courts in other states with similar public meeting statutes have held that the emergency must be dictated by actual events to avoid the exception devouring the rule. *Oregon Ass’n of Classified Employees v. Salem-Keizer School Dist.* 24J, 95 Or. App. 28, 34, 767 P.2d 1365, 1368 (Or. Ct. App. 1989) (finding scheduling issues of staff insufficient to constitute an emergency under Oregon’s public meeting law). The potential effects of waiting for a meeting after a public meeting law’s required notice period is inherently relevant to the determination whether an emergency meeting is permissible. *Hilliard v. Lewis County Water & Sewer District #5*, 9 Wash. App. 2d 1050 at 9 (Wash. Ct. App. 2019). It is a very fact specific determination. *See Mead School Dist. No. 354 v. Mead Ed. Ass’n*, 85 Wash. 2d 140, 145, 530 P.2d 302, 305 (Wash. 1975) (finding the cessation of public school education due to a teacher’s strike insufficient to constitute an “emergency” under the state’s public meeting law, which only required 24-hour notice for a properly noticed meeting); *Steenblock v. Elkhorn Tp. Bd.*, 245 Neb. 722, 726, 515 N.W.2d 128, 130 (Neb. 1994) (finding action to give two weeks termination notice to a town’s road grader was not required by an emergency when the road grader’s past performance was the reason for termination and he was permitted to continue to operate for two more weeks); *Lewis v. Town of Nederland*, 934 P.2d 848, 851 (Colo. App. 1996) (finding the need to make an appointment filling a board vacancy when circumstances made reaching a quorum, and thus conducting any business, nearly impossible fit within the emergency provision).

Here, the evidence indicates that without immediate action in the less than the five calendar days that would have been required for a properly

noticed meeting, the grass on the golf course would be irreparably harmed causing permanent closure of the golf course. The evidence also indicates that the water had been turned off to the golf course weeks before County staff began considering action and it was apparent from viewing the course that this was the case. The County contends it was not aware the company managing the golf course would not maintain it until two days before the meeting at issue. The County does not own the golf course property and was not a party to the contract negotiations taking place surrounding it. It is unclear to what extent the County could have anticipated or inquired of the property's owner, the U.S. Army Corps of Engineers, as to the status of the golf course property prior to August 22.

The OAG does not possess evidence that the Board was intending to avoid the OML in any way. To the contrary, upon calling the emergency meeting on August 24, the Board made significant efforts to notify the public of the emergency meeting, opened the meeting to the public and listened to public comment. The Board carefully limited the discussion during the meeting to the issue of watering the golf course to keep the grass alive until the Board's next regularly scheduled meeting when it could take further action.

There is insufficient evidence to find a violation of the OML in this instance. However, the OAG cautions the Board to be forward looking with potential actions such that emergency meetings are only called when the circumstances are unexpected and call so urgently for action that even the 3 working day delay otherwise required by NRS 241.020 would substantially increase the likelihood of physical damage or injury. *See Mead School Dist. No. 354* at 145.

CONCLUSION

Upon review of your Complaint and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close its file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
ROSALIE BORDELOVE
Chief Deputy Attorney General

JayDee Porras-Grant
January 16, 2024
Page 5

cc: T. Jaren Stanton, Esq.
District Attorney of Mineral County
P.O. Box 1210
Hawthorne, NV 89415