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**Via First Class Mail**

Rendal B. Miller, Esq.  
Miller Law, Inc.  
115 West 5<sup>th</sup> Street, Box #7  
Winnemucca, NV 89445

Re: Open Meeting Law Complaint, A.G. File No. 13897-192  
Humboldt County Insurance Benefits Review Committee

Dear Mr. Miller:

The Office of the Attorney General (OAG) received the complaint you filed on behalf of John Carlson, alleging that the Humboldt County Insurance Benefits Review Committee (Committee) violated the Nevada Open Meeting Law (OML) while interviewing and selecting finalists for a contract to provide insurance broker services to Humboldt County for employee benefits.<sup>1</sup>

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. In response to the complaint, the OAG reviewed the public notice, agendas, minutes and recordings for Committee meetings held during 2016, and the public notice, agenda and minutes of the December 7, 2015, meeting of the Humboldt County Board of County Commissioners (Board), together with a response to the complaint from the Humboldt County District Attorney's Office.

**FACTUAL BACKGROUND**

The Committee is created pursuant to collective bargaining agreements between Humboldt County and county employees "to consider alternatives to the current coverage and insurance providers offered by the County." *See* section 8.3 of the HCEA contract and

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<sup>1</sup> To the extent that the complaint alleges that Humboldt County did not comply with NRS Chapter 332 (the Local Government Purchasing Act) in soliciting contract proposals, this allegation fails to state a claim under the OML.

section 9.3 of the HCLEA contract. The Committee is comprised of representatives of all County employees and of County management, including representatives of the collective bargaining groups. The collective bargaining groups appointed their own representatives, and the County Administrator made all other appointments.

On October 29, 2015, County Administrator Dave Mendiola emailed the Committee members informing them he intended to convene a meeting to interview candidates for employee benefits broker services for 2016-17. The Committee met on November 19 and November 24, 2015, and interviewed four candidates identified by Mendiola, including the incumbent, Benefit Intelligence Insurance. The Committee recommended two finalists to the Board, LP Insurance and A&H Insurance. Although these meetings were not held as public meetings, all subsequent Committee meetings were, on the advice of the Humboldt County District Attorney's Office, public meetings.

The Board is a "public body" as defined in NRS 241.015(4), subject to the OML. Agenda item No. 12(C) for the Board's December 7, 2015, meeting read as follows:

Consideration of and possible appointment of a new agent/insurance broker of record for the County benefit packages. LP Insurance (Reno, NV) and A&H Insurance (Reno/Winnemucca) were recommended by the Insurance Committee and the Administrator. In addition, the Commission is being asked to authorize the Administrator to negotiate no more than a one-year contract, which will include a 30-day termination clause for any reason. If approved, negotiations with Benefit-Intelligence, current broker of record, will begin to terminate that contract that ends on June 30, 2016.

After presentations by staff, including communication of a counteroffer from Benefit Intelligence Insurance, comments from LP Insurance and A&H Insurance, and extensive discussion, the Board took action to enter into a contract with A&H Insurance and to terminate the current contract with Benefit Intelligence Insurance.

#### **DISCUSSION AND LEGAL ANALYSIS**

The term "public body" includes any "administrative, advisory, executive or legislative body of the State or a local government . . . which advises or makes recommendations to any entity which expends or disburses or is supported in whole or in part by tax revenue." NRS 241.015(4)(a). The statutory definition was amended in 2011 to clarify that the definition includes bodies created by "an action by the governing body of a political subdivision of this State."<sup>2</sup> NRS 241.015(4)(a)(7). Consistent with this statutory definition, the OAG has previously opined that to the extent a multimember group is appointed by a public body and given the task of making recommendations to that public body, that group is also a "public body" subject to the OML. See § 2.04 NEVADA OPEN

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<sup>2</sup> Assembly Bill 59, 2011 Leg., 76<sup>th</sup> Sess.

MEETING LAW MANUAL (12<sup>th</sup> ed. 2016) (and opinions cited therein). Conversely, the OAG has previously concluded that the OML did not apply to a citizens' advisory group that was formed by the Las Vegas City Manager without any involvement from the Las Vegas City Council. See OMLO 2007-04 (September 10, 2007).

In this instance, although the Board did not form the Committee or appoint the Committee members, the Committee was established pursuant to collective bargaining agreements approved by the Board for the specific purpose of making recommendations to the Board. While the Committee may not fall squarely within the statutory definition set forth in NRS 241.015(4)(a)(7), because the Committee's recommendations directly influence the decision-making of the Board on a matter of substantial public interest, the Committee effectively functions as a "public body."

The legislative intent of the OML is that the actions of public bodies "be taken openly, and that their deliberations be conducted openly." NRS 241.010(1); see also *McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) ("the spirit and policy behind NRS chapter 241 favors open meetings"). Therefore, the Committee's past failure to comply with the OML violated the spirit, if not the letter, of the law. However, there is no evidence that the Board or the Committee sought to intentionally evade the OML. Moving forward, the Committee should continue to hold public meetings in conformance with the OML in order to facilitate open government in furtherance of the Legislature's intent.

### CONCLUSION

Although there may not have been an actual violation of the law in this instance, the OAG strongly encourages compliance with the OML by advisory committees providing recommendations to public bodies in such circumstances as those presented here. The OAG will be closing its file on this matter.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By: 

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cc: Gabrielle Carr, Chief Civil Deputy District Attorney, Humboldt County