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OFFICE OF THE ATTORNEY GENERAL

555 E. Washington Ave., #3900  
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March 2, 2017

**Via First Class Mail**

Kathryn Parrish  
9550 Alice Lane  
Winnemucca, Nevada 89445

Lisa A. Andre  
118 Haskell Street  
Winnemucca, Nevada 89445

Re: Open Meeting Law Complaint, A.G. File No. 13897-214 and 216  
Humboldt County Hospital Board District Board of Trustees

Dear Ms. Parrish and Ms. Andre:

The Office of the Attorney General (OAG) is in receipt of your respective complaints alleging certain violations of the Nevada Open Meeting Law (OML) by the Humboldt County Hospital Board District Board of Trustees ("Board") relating to a private meeting attended by two Board members on September 27, 2016 (the "Private Meeting"), the Board's subsequent public meeting on the same date, and a private meeting of a Board subcommittee on October 26, 2016 (the "Subcommittee Meeting"). Because the complaints are related as further detailed below, they are addressed jointly in this response.

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. *See* NRS 241.037; NRS 241.039; NRS 241.040. In response to the complaint, the OAG reviewed the public notice, agenda and supporting materials, written minutes, audio recording of the meeting, sworn affidavits from Board members, together with a series of responses to the complaint from O. Kent Maher, Esq., legal counsel for the Board (the "Board Counsel").

**FACTUAL BACKGROUND**

The Board is created under the authority of NRS 450.070, and is a "public body" as defined in NRS 241.015(4), subject to the OML. On or about September 27, 2016, at the request of Board Member Michelle Miller ("Member Miller"), the Private Meeting took place involving the Hospital Administrator James G. Parrish ("Parrish"), Board Chairman Mel Hummel ("Chairman Hummel") and Board Counsel. Member Miller stated that she called the

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Private Meeting on her own initiative to discuss her concerns relative to the Parrish's handling of various matters over the last several months. There is no record or evidence that the Private Meeting was held at the request or direction of the Board or that the Board created a subcommittee comprised of Member Miller or Chairman Hummel to make decisions or recommendations regarding Parrish's contract or work performance.

You allege that Member Miller opened the Private Meeting by stating that she had enough votes to terminate Parrish's contract and that all six (6) Board members felt the same way. However, Chairman Hummel, Member Miller, and Board Counsel all stated that no such statements were ever made at the Private Meeting. Furthermore, the OAG received sworn affidavits from the Board members that no "serial communications" have taken place whatsoever relative to Parrish's contract.<sup>1</sup>

Agenda item no. F(5) for the Board's September 27, 2016, public meeting was identified for possible action and stated: "Hospital Administration/CEO James Parrish Employment Contract Review/Board." At the September 27, 2016, meeting, item no. F(5) was removed from the agenda, with the Board taking no action. Parrish subsequently resigned on September 28, 2016.

Agenda item no. F(2) for the Board's October 25, 2016, public meeting was identified for possible action and stated:

Hospital Administration / appropriate and desirable qualifications and criteria to be considered for selection and possible employment or appointment of an administrator-chief executive officer for the hospital district to serve on an interim or temporary basis until such time as a permanent administrator-chief executive officer may be selected and employed; the qualifications and criteria for possible selection may include, but are not limited to, the person's character, reputation, respect within the community and the healthcare community, willingness to work cooperatively and constructively with the Board of Trustees, medical staff, staff and the community served by the hospital, experience with hospital administration and budgeting, professional licensing and credentials, and availability to commence services / Board

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<sup>1</sup> During April 2015 and April 2016, Board members took part in confidential self-assessment surveys through an individual internet link assigned to each Board member. No individual Board member's information gathered by the facilitator of the survey was shared with other individual Board members. The information was summarized and presented in an aggregate form to facilitate Board communication and improvement. One question focused on the quality of the Board's relationship to the Administrator. However, this survey did not constitute a "serial communication" nor deliberations toward a Board action in violation of the OML.

The record of the Board's October 25, 2016, meeting reflects that the Board, while not taking formal action under agenda item no. F(2), tacitly approved the formation of a subcommittee by Chairman Hummel to identify and recommend an interim administrator. After the meeting, Chairman Hummel immediately appointed a subcommittee composed of Board Members Miller and Kevin Chatfield, as well as other healthcare professionals. As a result of the Subcommittee Meeting on October 26, 2016, the subcommittee recommended a single candidate, Darlene Bryan ("Bryan") to the Board. At the Board's November 10, 2016, public meeting, the Board accepted the subcommittee's recommendation and appointed Bryan interim administrator.

### DISCUSSION AND LEGAL ANALYSIS

The legislative intent of the OML is that the actions of public bodies "be taken openly, and *that their deliberations be conducted openly.*" NRS 241.020(1) (emphasis added); *see also McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (stating that "the spirit and policy behind NRS chapter 241 favors open meetings") (emphasis added). If a quorum of the Board deliberates outside of a public meeting, this would constitute a violation of the OML. *See Del Papa v. Board of Regents*, 114 Nev. 388, 956 P.2d 770 (1998) (holding that it is a violation of the OML for a quorum of a public body, using serial communications, to deliberate toward decision or to make a decision).

The OML applies to meetings of a public body. A "meeting" is defined in NRS 241.015(3) and generally requires a "gathering of members of a public body at which a 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." *See also Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 95, 64 P.3d 1070, 1076 (2003); OMLO 2007-05 (Sept. 10, 2007) (opining that OML did not apply to a private meeting, where less than a quorum was present); OMLO 2007-01 (June 11, 2007) (opining similarly).

To constitute a subcommittee of a public body subject to the OML, such subcommittee must have been created by "*an action of the governing body of a political subdivision of this State.*" NRS 241.015(4)(a)(7) (emphasis added). Consistent with this statutory definition, the AOG has previously opined that, to the extent a multimember group is appointed by a public body and given the task of making decisions for or recommendations to that public body, such group is also a "public body" subject to the OML. *See* § 2.04 NEVADA OPEN MEETING LAW MANUAL (12th ed. 2016).

### **The Private Meeting**

Because the Board has six members, Member Miller and Chairman Hummel alone did not constitute a “quorum” of the members of the Board. Furthermore, there is no evidence that the Board ever created a subcommittee of these two members to make decisions or recommendations regarding the Administrator’s contract or work performance. The Private Meeting was held at the initiative of Member Miller and no violation of the OML occurred.

### **The September 27, 2016, Board Meeting**

At the September 27, 2016 public meeting of the Board, item no. F(5) was removed from the agenda. NRS 241.020(2)(d)(6)(III) provides that a public body “may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.” The Board never deliberated or took action relative to that agenda item. As previously discussed, there is no evidence to support the allegation that the Board members engaged in serial communications regarding Parrish’s contract or work performance. Parrish’s resignation was not the result of any Board action and no violation of the OML occurred.

### **The Subcommittee Meeting**

Since the subcommittee was not created by or at the direction of the Board, the subcommittee is not a “public body” under the strict definition of NRS 241.015(4)(a)(7). Nevertheless, the Board’s appointment of Ms. Bryan as interim administrator at the November 10, 2016, meeting was predicated on the understanding that Chairman Hummel had formed a subcommittee to make this recommendation. Because the subcommittee’s recommendation directly influenced the decision-making of the Board on a matter of substantial public interest to the residents of Humboldt County, the subcommittee effectively functioned as a “public body.” Therefore, the subcommittee’s failure to comply with the OML violated the spirit, if not the letter, of the law. See OMLO 13897-290 (July 26, 2016).

The subcommittee should have complied with the OML, in order to facilitate open government in furtherance of legislative intent. However, there is no evidence that either the Board or the subcommittee sought to intentionally evade the OML in this instance. Public bodies are warned against acquiescing to the informal appointment of advisory bodies by chairpersons in a deliberate effort to circumvent the OML; such action may result in the prosecution by the OAG.

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CONCLUSION

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

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Csoka', written over a horizontal line.

Louis V. Csoka  
Deputy Attorney General  
702-486-3824

cc: O. Kent Maher, Esq.