

ADAM PAUL LAXALT  
*Attorney General*



WESLEY K. DUNCAN  
*First Assistant Attorney General*

NICHOLAS A. TRUTANICH  
*Chief of Staff*

KETAN D. BHIRUD  
*General Counsel*

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL  
100 North Carson Street  
Carson City, Nevada 89701

May 25, 2017

**Via First Class Mail**

James O. Hartman  
PO Box 194  
Genoa, NV 89411

Re: Open Meeting Law Complaint, O.A.G. File No. 13897-232  
Nevada Tax Commission

Dear Mr. Hartman:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging a violation of the Open Meeting Law (OML) by the Nevada Tax Commission (Commission) in the adoption of temporary regulations pursuant to NRS 453D.200 and the Nevada Administrative Procedure Act, NRS Chapter 233B (APA) at a public meeting on May 8, 2017. The gravamen of the complaint is that the Commission failed to expressly state that the regulations to be adopted pertained to the regulation and taxation of marijuana.

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. For the reasons set forth below, the OAG has concluded that while the Commission may not have violated the strict language of the OML, the failure to specify that the regulations to be adopted related to marijuana violated the policy behind the law.

**FACTUAL BACKGROUND**

The Commission is created pursuant to NRS 360.010, is a "public body" as defined in NRS 241.015(4), and is therefore subject to the OML. Agenda item No. 7(B) for the Commission's May 8, 2017, meeting was identified "for possible action" and read as follows:

VII. Consideration for Approval of Adoption of Temporary Regulations:

\* \* \* \*

**B. Adoption of proposed Temporary Regulation relating to authorizing the Department of Taxation to adopt all regulations necessary or convenient to carry out the provisions of NRS Chapter 453D. LCB File No. T002-17 (for possible action)**

NRS Chapter 453D is the Regulation and Taxation of Marijuana Act (NRS 453.010), and was enacted by 2016 initiative petition, Ballot Question No. 2.

**DISCUSSION AND LEGAL ANALYSIS**

Public bodies working on behalf of Nevada citizens must conform to statutory requirements in open meetings under an agenda that provides full notice and disclosure of discussion topics and any possible action. *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003). NRS 241.020(2) requires a public body to post notice of any meeting together with an agenda consisting of a “clear and complete statement of the topics scheduled to be considered during the meeting.” In *Sandoval*, the Nevada Supreme Court interpreted the “clear and complete” requirement to mean that it must provide the public with “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*, 119 Nev. at 154-55, 67 P.3d at 906. Additionally, the Court noted that “[a] higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public.” *Id.*

Under the APA, all workshops and public hearings on proposed regulations, and the adoption of regulations, must be done in conformance with the OML. NRS 233B.0601; NRS 233B.061.

Agenda item No. 7(B) is clear and complete on its face. The agenda item complied with the statutory mandate to provide the public notice that the Commission would deliberate and potentially take action to adopt temporary regulations to carry out the provisions of NRS Chapter 453D, and it expressly referenced the Legislative Counsel Bureau’s file number for the proposed regulations. The complaint does not allege or present evidence that the Commission’s deliberations or actions on May 8, 2017, exceeded the scope of this agenda item.

James O. Hartman  
May 25, 2017  
Page 3

However, the OAG notes that the standard practice of the Commission when adopting regulations is to include a description of the subject matter of the regulations, a practice the Commission deviated from in this instance when adopting regulations on a matter of substantial public interest, the regulation and taxation of marijuana. The Nevada Supreme Court has held that "[t]he *spirit* and policy behind NRS chapter 241 favors open meetings." *McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (emphasis added); *see also* NRS 241.016(4), which states that "[t]he exceptions provided to this chapter . . . must not be used to circumvent the *spirit* or letter of this chapter" (emphasis added). In this instance, the Commission's failure to follow its own standard practice – and specify that the regulations related to marijuana – violated the spirit, if not the letter, of the law.

### CONCLUSION

Although there may not have been an actual violation of the law in this instance, in the interest of open government, the OAG recommends that the agenda for any public hearings or meetings conducted pursuant to the APA for the adoption of regulations include a description of the subject matter of the regulations, so that the public may determine if it is a subject in which they have an interest. The OAG will be closing its file on this matter.

Sincerely,

ADAM PAUL LAXALT  
Attorney General

By: \_\_\_\_\_

  
Brett Kandt  
Chief Deputy Attorney General

WBK/klr

cc: James C. DeVolld, Chairman, Nevada Tax Commission