



STATE OF NEVADA
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October 31, 2013

Brian Davie, Legislative Services Officer
Legislative Counsel Bureau, Las Vegas Office
555 East Washington Avenue, Room 4400
Las Vegas, Nevada 89101

Re: Open Meeting Law Complaint / AG File No. 13-029
Clark County Deferred Compensation Plan Committee

Dear Mr. Davie:

This Open Meeting Law (OML) Complaint alleges the Clark County Deferred Compensation Committee (Committee) is a public body, but that it does not comply with the OML's requirement of open and public meetings. NRS 241.020. The Complaint alleges that recent Committee meetings have not been public.

The Clark County District Attorney's office responded to our request for information about the Committee. Mary Ann Miller, County Counsel, Civil Division, advised us that the Committee is not a public body subject to NRS Chapter 241. The explanation is that it is an eleven-person committee appointed by the Clark County Manager, Donald G. Burnette. The Clark County Board of County Commissioners did not appoint the Committee nor does it receive recommendations from the Committee.

In the Spring of 2013, Mr. Burnette received a recommendation from the Committee that a new administrator should be selected to administer the program. Requests for Proposals were published in accordance with NRS 332 and specifically NRS 332.061, which makes proprietary information confidential. When eight responses were received, county staff created an ad hoc committee of six individuals (none of whom were members of the BOCC). The ad hoc committee winnowed the eight responses down to four. These four proposals were then presented to Clark County Purchasing staff, which then selected Mass Mutual as its final choice. Mr. Burnette then

Purchasing staff, which then selected Mass Mutual as its final choice. Mr. Burnette then recommended the choice to the BOCC. On August 20, 2013, the BOCC approved Mass Mutual, as the administrator of the County's deferred compensation program.

The OML does not define "committee, subcommittee or subsidiary thereof." The Attorney General advises that to the extent a group is appointed by a public body and is given the task of making decisions for or recommendations to a public body, the group would be governed by the OML. See OML Opinion 2002-017 (April 18, 2002) and OML Opinion 2002-27 (June 11, 2002). *But see* AG File No. 07-030 (September 10, 2007) (OML does not apply to the appointment of a citizen advisory panel to advise Las Vegas City Manager when acting in his official capacity). Attorney General OML Manual, § 3.03 (11th Ed. 2012).

The Committee was not created by or appointed by the Clark County Board of County Commissioners (BOCC), which is a public body. NRS 287.440 states that a local governing body *may* appoint a deferred compensation committee. The Committee is described by counsel as an "informal" committee, 1) appointed by the County Manager; and 2) the Committee only makes recommendations to the County Manager – not to the BOCC. Since its inception, the Committee has been appointed by the County Manager, not the BOCC, The difference in creation is dispositive as to whether the Committee is a public body.

The Office of the Attorney General has opined that formality in appointment is not the sole dispositive factor in determining what constitutes a public body under the OML, and informality in appointment should not be an escape from it; to hold otherwise would encourage circumvention of the OML through the use of unofficial committees. We found no evidence of formal or informal appointment of the Committee by the BOCC.

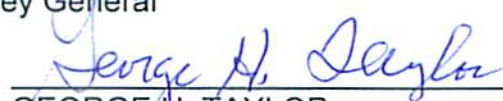
There was no evidence that the BOCC performed any role other than review and approval of Mr. Burnette's recommendation to select an administrator. The Committee and the ad hoc committee were formed at the direction of Mr. Burnette.

We do not find a violation of the OML. We are closing our file on this matter.

Sincerely,

CATHERINE CORTEZ MASTO
Attorney General

By:



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Brian Davie, Legislative Services Officer

October 31, 2013

Page 3

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**cc: Mary Anne Miller, Counsel for Clark County Manager
Donald G. Burnette, Clark County Manager
Elizabeth A. Vibert, Deputy District Attorney, Counsel for the Clark County
Deferred Compensation Committee
Chetan Champaneri, Purchasing Analyst, Clark County Department of Finance**