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III.

ISSUE

Did the Board violate the Open Meeting Law by failing to post a notice in Moapa Valley?

IV.

CONCLUSIONS OF LAW

NRS 241.020(3) and (4) states:

3. Minimum public notice is:

(a) Posting a copy of the notice at the *principal office of the public body* or, if there is no principal office, at the building in which the meeting is to be held, and at *not less than three other separate, prominent places* within the jurisdiction of the public body not later than *9 a.m. of the third working day before the meeting*; and

4. If a public body maintains a website on the Internet or its successor, the *public body shall post notice of each of its meetings on its website* unless the public body is unable to do so because of technical problems relating to the operation or maintenance of its website. Notice posted pursuant to this subsection is supplemental to and is not a substitute for the minimum public notice required pursuant to subsection 3. The inability of a public body to post notice of a meeting pursuant to this subsection as a result of technical problems with its website shall not be deemed to be a violation of the provisions of this chapter. [Emphasis added.]

Section 6.05 of the Nevada Open Meeting Law Manual states, “[w]orking days include every day of the week except Saturday, Sunday, and holidays declared by law or proclamation of the President. The actual day of a meeting is not to be considered as one of the three working days referenced in the statute. See OMLO 99-06 (March 19, 1999).”

Because the meeting was on Thursday, November 18, 2004, the Open Meeting Law requires the notice to be posted on the preceding Monday, November 15, 2004, no later than 9:00 a.m. Here the evidence indicates that the Board posted its notice five days prior to Monday, November 15, 2004. Thus the Board posted its notice in a timely manner.

The Open Meeting Law requires the Board to post its notice at its “principal office,” and three other “prominent places within the jurisdiction.” NRS 241.020(3). Also, if the Board maintains a website, the Board must post its notice on the website as well. NRS 241.020(4). The Board posted its agenda at its principal office and at five other prominent places (public

1 libraries) located within the Board's jurisdiction, which exceeds the Board's legal duties under  
2 the Open Meeting Law. The Board also posted the notice on its website, which the Open  
3 Meeting Law required. The Open Meeting Law does not require a public body to post its  
4 agendas throughout its entire jurisdiction. Therefore, the Board not only complied with the  
5 Open Meeting Law's posting requirements, but exceeded its statutory duties. However,  
6 because of this investigation, the Board, as a courtesy to the rural areas it serves, agreed to  
7 further exceed its statutory duties and post its notices in rural areas as well.

8 **V.**

9 **CONCLUSION**

10 Although the Clark County School District Board of Trustees chose not to post its  
11 notice in Moapa Valley and other rural areas of Clark County, the Open Meeting Law does not  
12 require a public body to post its notices throughout the entire jurisdiction. The Open Meeting  
13 Law only requires a public body to post its notices at its principal office, three prominent  
14 locations, and if it maintains a website, on its website, which the Board did. Therefore, the  
15 Board complied with the Open Meeting Law.

16 DATED this \_\_\_\_\_ day of January 2005.

17 BRIAN SANDOVAL  
18 Attorney General

19 By:

20 \_\_\_\_\_  
21 NEIL A. ROMBARDO  
22 Senior Deputy Attorney General  
23 Nevada State Bar 6800  
24 100 North Carson Street  
25 Carson City, Nevada 89701-4717  
26 (775) 684-1205  
27  
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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of January, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Lisa Wilson  
Post Office Box 793  
Overton, Nevada 89040

Ann Bersi  
Clark County Deputy District Attorney  
Post Office Box 552215  
Las Vegas, Nevada 89155-2215

\_\_\_\_\_  
An Employee of the Office of the  
Nevada Attorney General



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III.

**ISSUE**

Did the Board violate the Open Meeting Law by failing to notice Mrs. McCord about the meetings?

IV.

**CONCLUSIONS OF LAW**

The relevant portion of NRS 241.020(3) states:

3. Minimum public notice is:

.....  
(b) Providing a copy of the notice to any person who has requested notice of the meetings of the public body. A request for notice lapses 6 months after it is made. The public body shall inform the requester of this fact by enclosure with, notation upon or text included within the first notice sent. The notice must be:

(1) Delivered to the postal service used by the public body not later than 9 a.m. of the third working day before the meeting for transmittal to the requester by regular mail; or

(2) If feasible for the public body and the requester has agreed to receive the public notice by electronic mail, transmitted to the requester by electronic mail sent not later than 9 a.m. of the third working day before the meeting.

NRS 241.020(3)(b) does *not* require a member of the public to make a written request to the public body to receive an agenda by mail. In fact, Section 6.04 of the NEVADA OPEN MEETING LAW MANUAL states, “[a] public body should implement internal record keeping procedures to keep track of those who have requested notice.” NEVADA OPEN MEETING LAW MANUAL, § 6.04 (9<sup>th</sup> ed. 2001). Therefore, it is the responsibility of the public body to maintain records of any request for notice whether the request is made in writing or orally.

For the last two years Mrs. McCord made written requests for notice of Board meetings on a month-to-month basis, and she received the requested notices. However, recently, the Board failed to mail Mrs. McCord the agendas. Mr. Quinn alleges that he was unaware of a “written” request by Mrs. McCord to receive the notices by mail. However, NRS 241.020(3)(b) does not require that the request be made in writing. Therefore, the law permits Mrs. McCord to make the request orally.

NRS 241.020(3)(b) states that a request for notice lapses six months from the date of

1 the request. Thus the issue becomes when did Mrs. McCord make her last request to receive  
2 notice of the Board's meetings? The Board admits, and the facts support, that Mrs. McCord  
3 did make some type of request in the past either in writing or orally. Unfortunately, there is  
4 neither a record of when Mrs. McCord's last request was made, what was stated in her  
5 request, nor evidence of the required six-month lapsed notice. It is the responsibility of the  
6 public body to maintain these records to ensure compliance with the Open Meeting Law and  
7 provide evidence of such compliance. As a result, the Board is unable to defend against the  
8 complaint so we are forced to presume Mrs. McCord's allegations as established and that the  
9 Board violated the Open Meeting Law.

10 However, this Office discussed this complaint with Patrick Geurts, Town Board  
11 Chairman, and Mr. Quinn, Secretary of the Board. To their credit, they took this complaint  
12 very seriously and agreed that they will provide Mrs. McCord with notice through the mail.

13 **V.**

14 **CONCLUSION**

15 The Office of the Nevada Attorney General finds that the Silver Springs Advisory Board  
16 violated the Open Meeting Law because it failed to maintain records evidencing that  
17 Mrs. McCord was provided notice consistent with the Open Meeting Law. This Office advises  
18 the Silver Springs Advisory Board to maintain records of any request whether made in writing  
19 or orally. Also, this Office advises the Board that pursuant to NRS 241.020(3)(b) it must  
20 inform the requestor that her request expires in six months. During the investigation of this  
21 issue, the Silver Springs Advisory Board agreed to send the notices of Board meetings to

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1 Mrs. McCord upon her request,<sup>1</sup> and it agreed to inform her that such a request expires in six  
2 months. Therefore, the Office of the Nevada Attorney General will forego litigation on this  
3 issue, but advises the Silver Springs Advisory Board to act in a manner consistent with this  
4 opinion.

5 DATED this \_\_\_\_\_ day of February 2005.

6 BRIAN SANDOVAL  
7 Attorney General

8  
9 By: \_\_\_\_\_  
10 NEIL A. ROMBARDO  
11 Senior Deputy Attorney General  
12 Nevada State Bar No. 6800  
13 100 North Carson Street  
14 Carson City, Nevada 89701-4717  
15 (775) 684-1205  
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28 \_\_\_\_\_  
<sup>1</sup> The Board agrees to send the notice to Mrs. McCord upon her request, but it is the responsibility of Mrs. McCord to make such a request.



**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of February, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Win Early McCord  
3620 Cypress Street  
Silver Springs, Nevada 89429-9390

Patrick Geurts, Town Board Chairman  
Silver Springs Advisory Board  
Post Office Box 264  
Silver Springs, Nevada 89429

Andy Quinn, Board Secretary  
Silver Springs Advisory Board  
Post Office Box 264  
Silver Springs, Nevada 89429

\_\_\_\_\_  
An Employee of the Office of the  
Nevada Attorney General

**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

In the Matter of: )

BOARD OF WILDLIFE COMMISSIONERS )

Attorney General File No. 04-068  
OMLO 2005-03

**I.**

**INTRODUCTION**

In a letter received December 16, 2004, by the Office of the Nevada Attorney General, Dr. Gerald Lent filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Dr. Lent alleges that the Board of Wildlife Commissioners (Board) violated the Open Meeting Law at its December 17, 2004 meeting by approving minutes that did not contain Dr. Lent's statements made at the November 5, 2004 Board meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, supporting documents, and audiotape recordings.

**II.**

**FINDINGS OF FACT**

The Board held a meeting on November 5, 2004. During that meeting, Dr. Lent made both written and oral statements to the Board. Dr. Lent requested that his statements be included in the minutes. He then stated that he would like the statements included in the record. On December 17, 2004, the Board approved the November 5, 2004 minutes without Dr. Lent's statements.

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1 III.

2 ISSUE

3 Did the Board violate the Open Meeting Law by approving the minutes without  
4 including Dr. Lent's oral comments and written statement?

5 IV.

6 CONCLUSIONS OF LAW

7 NRS 241.035(1)(d) states:

8 1. Each public body shall keep written minutes of each of its  
9 meetings, including:

10 (d) The substance of remarks made by any member of the general  
11 public who addresses the body if he requests that the minutes  
reflect his remarks or, if he has prepared written remarks, a copy of  
his prepared remarks if he submits a copy for inclusion.

12 NRS 241.035(1)(d) only requires the "substance of remarks" be included in the minutes. The  
13 plain meaning of "substance" is the essential nature or fundamental or characteristic part or  
14 quality of something, which by definition is not verbatim. Therefore, at the request of a  
15 member of the public, the law requires the Board to place the substance of his or her oral  
16 comments in the minutes, but the law does not require the verbatim of those comments.

17 NRS 241.035(1)(d) further requires that any "prepared remarks" submitted to the public  
18 body for inclusion to the minutes must become a part of the minutes. Thus, the law also  
19 requires any prepared remarks be included in the minutes at the request of the member of the  
20 public.

21 Dr. Lent requested that both his oral and written statements be made a part of the  
22 minutes. Dr. Lent then requested that his statements be made a part of the record. Terry  
23 Crawforth, Secretary to the Board, explained to this Office that the Board treats the record and  
24 the minutes differently and thus did not include the substance of Dr. Lent's statements in the  
25 minutes.<sup>1</sup> However, members of the general public cannot be required to anticipate that the  
26 Board would treat the terms "record" and "minutes" differently. The average member of the  
27

28 <sup>1</sup> The "record" of a public hearing includes, among other media, all written documents, and in this case,  
the record included Dr. Lent's written statement.

1 general public does not understand that a difference exists. Since Dr. Lent specifically  
2 mentioned he wanted his comments in the “minutes” and then stated he wanted them in the  
3 “record,” the confusion for Board staff is understandable, but considering the statute’s  
4 requirements, the more reasonable analysis of these facts is that Dr. Lent wanted the  
5 substance of his comments to be at least included in the minutes pursuant to  
6 NRS 241.035(1)(d), if not both. Therefore, since the Board failed to place the substance of  
7 Dr. Lent’s oral comments and his written statement in the minutes and mistakenly assumed  
8 including his written statement in the record would suffice, the Board violated  
9 NRS 241.035(1)(d) of the Open Meeting Law.

10 During the investigation of this issue, Mr. Crawforth represented to this Office that he  
11 would urge the Board to reconsider the November 5, 2004 minutes and include Dr. Lent’s  
12 comments in the minutes to cure this violation. On February 4, 2005, the Board reconsidered  
13 the November 5, 2004 minutes and added Dr. Lent’s comments to the minutes. During this  
14 meeting, Mr. Crawforth also explained to the Board the legal requirements for including  
15 comments from the general public in the minutes. Therefore, the Board took the appropriate  
16 action to cure its violation of the Open Meeting Law.

17 **V.**

18 **CONCLUSION**

19 Although the Board of Wildlife Commissioners violated the Open Meeting Law by failing  
20 to include the substance of Dr. Lent’s comments and written statement in the minutes, it cured  
21 the violation by reconsidering the minutes and placing such into the minutes. As a result, the

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1 Office of the Nevada Attorney General has no reason to proceed with any legal action, but  
2 advises the Board of Wildlife Commissioners to act consistent with this opinion in the future.

3 DATED this \_\_\_\_\_ day of March 2005.

4 BRIAN SANDOVAL  
5 Attorney General

6  
7 By:

8 \_\_\_\_\_  
9 NEIL A. ROMBARDO  
10 Senior Deputy Attorney General  
11 Nevada State Bar 6800  
12 100 North Carson Street  
13 Carson City, Nevada 89701-4717  
14 (775) 684-1205  
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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of March, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Dr. Gerald A. Lent  
Keystone Professional Building  
831 Keystone Avenue  
Reno, Nevada 89503

Terry R. Crawford, Secretary  
Board of Wildlife Commissioners  
1100 Valley Road  
Reno, Nevada 89512

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An Employee of the Office of the  
Nevada Attorney General

1 STATE OF NEVADA  
2 OFFICE OF THE ATTORNEY GENERAL  
3 NEVADA DEPARTMENT OF JUSTICE

4 In the Matter of:

5 BOARD OF MINERAL COUNTY  
6 COMMISSIONERS

) Attorney General File No. 04-069  
) OMLO 2005-04  
)

7 I.

8 **INTRODUCTION**

9 In a letter received January 4, 2005, by the Office of the Nevada Attorney General,  
10 Mr. Horace Carlyle filed a complaint with this Office alleging a violation of the Nevada Open  
11 Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Mr. Carlyle alleges  
12 that the Board of Mineral County Commissioners (Board) violated the Open Meeting Law at its  
13 December 15, 2004 meeting by conducting a closed meeting with its attorney, taking action  
14 during the closed meeting, and/or not keeping minutes during the closed meeting.

15 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
16 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
17 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
18 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
19 and interviewed participants of the closed session.

20 II.

21 **FINDINGS OF FACT**

22 The Board held a properly noticed open meeting on December 15, 2004. For this  
23 meeting, the Board noticed on its agenda an item for a presentation and possible action  
24 regarding existing litigation, *State v. Day Zimmerman Hawthorne Corporation (DZHC)*  
25 (Supreme Court Case #37725), *DZHC v. State, et al.* (Fifth Judicial District Court Case  
26 #8549), and State Board of Equalization Cases #181 and #183. The Board also noticed a  
27 “Closed Session pursuant to NRS 241.015 (2) (b) (2) - To receive information from County  
28 Attorney relative to existing litigation involving DZHC.” BOARD OF COUNTY COMMISSIONERS

1 AGENDA, December 15, 2004.

2 The minutes from the December 15, 2004 meeting state, "No need for this item at this  
3 time" referring to the presentation and possible action regarding *State v. DZHC* (Supreme  
4 Court Case #37725), *DZHC v. State, et al.* (Fifth Judicial District Court Case #8549), and  
5 State Board of Equalization Cases #181 and #183. Thus the Board did not consider that item.

6 The Board went into closed session pursuant to NRS 241.015(2)(b)(2) to discuss  
7 existing litigation against DZHC with Rachel Nichols, the Board's attorney. The Board noticed  
8 this item on its agenda for approximately 9:00 a.m., but conducted the closed meeting at  
9 approximately 10:45 a.m.<sup>1</sup> The Board received information from Ms. Nichols regarding the  
10 existing litigation and deliberated about potential strategy on litigating the case. However, the  
11 Board did not take any action during the closed meeting.<sup>2</sup>

12 **III.**

13 **ISSUE**

14 Did the Board's closed meeting pursuant to NRS 241.015(2)(b)(2) violate the Open  
15 Meeting Law?

16 **IV.**

17 **CONCLUSIONS OF LAW**

18 NRS 241.015(2)(b)(2) states:

19 2. "Meeting":

20 . . . .  
21 (b) Does not include a gathering or series of gatherings of  
22 members of a public body, as described in paragraph (a), at which  
23 a quorum is actually or collectively present:

24 . . . .  
25 (2) To receive information from the attorney employed or retained  
26 by the public body regarding potential or existing litigation involving  
27 a matter over which the public body has supervision, control,  
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25 <sup>1</sup> Mr. Carlyle complained that the closed meeting was held at 10:45 a.m., but the agenda stated that the  
26 closed meeting was to be held at 9:00 a.m. The agenda is clear that several items were scheduled to begin at  
27 9:00 a.m., and the items would proceed until completed by the Board. Therefore, it is not necessary to provide  
28 legal analysis on this issue, and the Board did not violate the Open Meeting Law.

<sup>2</sup> This Office interviewed District Attorney Cheri Emm-Smith and Assessor Gloria Hughes regarding the  
closed session, and they indicated that the Board discussed the status of the litigation with Ms. Nichols and  
deliberated about potential strategy on how to proceed with the case. The Board did not take any action or  
reach a decision during the closed session.



1 jurisdiction or advisory power and to deliberate toward a decision  
on the matter, or both.

2 Section 5.11 of the NEVADA OPEN MEETING LAW MANUAL states, in part, "The receipt of  
3 information from the attorney and the public body's deliberation can both occur in the  
4 equivalent of a 'closed meeting.' However, any decision must be made in public at the  
5 reopened meeting. . . ." NEVADA OPEN MEETING LAW MANUAL, § 5.11 (9<sup>th</sup> ed. 2001). Therefore,  
6 a public body meeting with its attorney to discuss existing or potential litigation is not a  
7 meeting for purposes of the Open Meeting Law.

8 Since a meeting pursuant to NRS 241.015(2)(b)(2) is not a meeting for purposes of the  
9 Open Meeting Law, a public body is not under a strict legal obligation to place this type of  
10 legal consultation on an agenda. However, this Office has always advised that when a public  
11 body interrupts an open meeting to conduct a "closed meeting" with its attorney that such an  
12 interruption should be placed on the agenda. This practice will avoid confusion and meritless  
13 allegations of wrongdoing. The Board placed the closed meeting with its attorney on the  
14 agenda and, as a result, complied with the Open Meeting Law.

15 Since a meeting pursuant to NRS 241.015(2)(b)(2) is not a meeting for purposes of the  
16 Open Meeting Law, there is no legal requirement for a public body to keep minutes of such a  
17 "meeting." The Board, in this case, did not take minutes, and it was under no legal obligation  
18 to take minutes of its "closed meeting" pursuant to NRS 241.015(2)(b)(2).

19 During the closed portion of the meeting, the Board met with Ms. Nichols to discuss its  
20 existing litigation with DZHC. During this discussion, Ms. Nichols briefed the Board about the  
21 litigation's status. NRS 241.015(2)(b)(2) permits the Board to receive a briefing from its  
22 attorney regarding existing litigation as well as potential litigation. Thus Ms. Nichol's briefing  
23 regarding existing litigation during a closed meeting did not violate the Open Meeting Law.

24 NRS 241.015(2)(b)(2) is the only instance in which Nevada's Open Meeting Law  
25 permits a public body to receive information and deliberate towards a decision on the matter in  
26 private, and these deliberations may only be about existing or potential litigation. Section 5.01  
27 of the NEVADA OPEN MEETING LAW MANUAL defines "deliberate" as "to examine, weigh and  
28 reflect upon the reasons for or against the choice . . . ." NEVADA OPEN MEETING LAW MANUAL,

1 § 5.01 (9<sup>th</sup> ed. 2001) citing from *Sacramento Newspaper Guild v. Sacramento County Board*  
2 *of Supervisors*, 69 Cal. Rptr. 480 (Cal. Ct. App. 1968). Deliberation thus connotes collective  
3 discussion among the members of the public body toward the ultimate decision.

4 Although this Office has not previously opined upon the term “deliberate” as it is found  
5 in NRS 241.015(2)(b)(2), a public body may deliberate with its attorney over strategy  
6 decisions regarding potential or existing litigation. These deliberations may include members  
7 of the public body providing guidance to its attorney on how each expects the public body to  
8 be represented. For example, each member of the public body may express his or her  
9 opinion on the amount he or she would be willing to settle a case. However, such  
10 deliberations may not result in any action to settle a case or to make or accept an offer of  
11 judgment, which action shall only occur in an open meeting. A decision to settle a case or  
12 make or accept an offer of judgment would be an action, which is prohibited in any type of  
13 closed meeting and would exceed the express language of NRS 241.015(2)(d)(2). The facts  
14 here indicate that the Board deliberated over strategy decisions with Ms. Nichols, but did not  
15 reach or make any decision regarding the existing litigation. Thus the Board conducted itself  
16 within the legal requirements of Nevada’s Open Meeting Law.

17 **V.**

18 **CONCLUSION**

19 The Board of Mineral County Commissioners complied with the Open Meeting Law  
20 when it conducted a closed meeting to receive information from its attorney regarding existing  
21 litigation and deliberated about potential strategy in order to manage the litigation. Because  
22 such a consultation with legal counsel is not a “meeting” under the Open Meeting Law, the  
23 Board was not required to keep minutes under NRS 241.035. The Board also interrupted its  
24 open meeting to conduct the “closed meeting” with its attorney; the Board noticed this meeting  
25 and, by doing so, complied with the Nevada Attorney General’s advice in the NEVADA OPEN  
26 MEETING LAW MANUAL. NEVADA OPEN MEETING LAW MANUAL, § 5.11 (9<sup>th</sup> ed. 2001). Therefore,  
27 the Office of the Nevada Attorney General commends the Board of Mineral County  
28 Commissioners’ efforts in conducting this “closed meeting” in excess of the minimum

1 requirements of the Open Meeting Law.

2 DATED this \_\_\_\_\_ day of March 2005.

3 BRIAN SANDOVAL  
4 Attorney General

5  
6 By: \_\_\_\_\_  
7 NEIL A. ROMBARDO  
8 Senior Deputy Attorney General  
9 Nevada State Bar 6800  
10 100 North Carson Street  
11 Carson City, Nevada 89701-4717  
12 (775) 684-1205

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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of March, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Horace H. Carlyle  
Post Office Box 2568  
Hawthorne, Nevada 89415-2568

Helene J. Weatherfield  
Mineral County Clerk and Treasurer  
Post Office Box 1450  
Hawthorne, Nevada 89415

Cheri K. Emm  
Mineral County District Attorney  
Post Office Box 1210  
Hawthorne, Nevada 89415

\_\_\_\_\_  
An Employee of the Office of the  
Nevada Attorney General

**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

In the Matter of: )  
RENO CITY PLANNING COMMISSION ) Attorney General File No. 05-011  
OMLO 2005-05

**I.**

**INTRODUCTION**

In a letter received March 3, 2005, by the Office of the Nevada Attorney General, Ms. Ellen Steiner filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Ms. Steiner alleges that the Reno City Planning Commission (Commission) violated the Open Meeting Law at its January 20, 2005 meeting by failing to properly notice LDC04-00130 on its agenda.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, and supporting documents.

**II.**

**FINDINGS OF FACT**

On January 20, 2005, the Commission considered item VI, subpart 4, which was noticed as follows:

LDC04-00130 (Monarch Property/13095 S Virginia) -This is a request for: 1) a Master Plan Amendment from Urban Residential/Commercial to Tourist Commercial; and 2) a zoning map amendment from AC (Arterial Commercial) to HC (Hotel Casino). The ±12.96 acre site is located on the east side of South Virginia Street, ±4,000 feet south of South Meadows Parkway.

Ms. Steiner alleges that the address of “13095 South Virginia” is incorrect, but the Commission asserts that it obtained the address from the county assessor’s records. The

1 Engineering Department of Washoe County is the entity responsible for assigning actual  
2 street addresses, and it appears that Ms. Steiner's allegation is correct that the physical street  
3 address would be different than the address in the assessor's records. Therefore, there may  
4 be a discrepancy between the actual street address that may be assigned by the Engineering  
5 Department of Washoe County and the address noticed in the Commission's agenda.

6 **III.**

7 **ISSUE**

8 Did the Commission meet the "clear and complete" notice requirement in  
9 NRS 241.020(2)(c)(1)?

10 **IV.**

11 **CONCLUSIONS OF LAW**

12 NRS 241.020(2)(c)(1) states:

13 2. Except in an emergency, written notice of all meetings must be  
14 given at least 3 working days before the meeting. The notice must  
include:

15 . . .

(c) An agenda consisting of:

16 (1) A *clear and complete* statement of the topics scheduled to be  
17 considered during the meeting. [Emphasis added.]

18 In Section 7.02 of the Nevada Open Meeting Law Manual, it states, "Agenda items must be  
19 described with clear and complete detail so that the public will receive notice in fact of what is  
20 to be discussed by the public body." See NEVADA OPEN MEETING LAW MANUAL, § 7.02 (9<sup>th</sup> ed.  
21 2001). That section also states, "An agenda must never be drafted with the intent of creating  
22 confusion or uncertainty as to the items to be considered or for the purpose of concealing any  
23 matter from receiving public notice." *Id.* at 47. In OMLO 99-01 (January 5, 1999) and  
24 OMLO 99-03 (January 11, 1999) this Office opined, "agenda descriptions for resolutions,  
25 ordinances, regulations, statutes, rules or the like to be considered by public bodies should  
26 describe what the statute, ordinance, regulation, resolution or rule relates to so that taxpayers  
27 and citizens may determine if it is a subject in which they have an interest." Thus the issue  
28 becomes whether the Commission's agenda caused confusion or whether it was "clear and

1 complete” so as to provide the public with enough information to determine if it was a subject  
2 in which they had interest.

3 The Commission considered an amendment to its master plan and zoning map. The  
4 property is not only identified by the address, but identified by measurements from specific  
5 locations in the City. Although it appears that the Washoe County Engineering Department  
6 may provide a different street address to the property, the Commission reasonably relied upon  
7 its assessor’s records to determine the address.<sup>1</sup> Further, the facts indicate that the notice  
8 did not create confusion for members of the public because 30 members of the public  
9 attended the Commission’s meeting and submitted cards to the Commission in favor of or  
10 against the amendments. The agenda also clearly and completely described the  
11 amendments to be considered and informed the public of the type of changes being  
12 considered. Thus if the address on the agenda was in error, it was *de minimis* and not  
13 substantive in this case, and complainant was not denied a right conferred by the Open  
14 Meeting Law.

15 **V.**

16 **CONCLUSION**

17 The Reno City Planning Commission complied with the “clear and complete”  
18 requirement of the Open Meeting Law, and the agenda provided members of the public with  
19 enough notice to determine if the item was a topic in which they had an interest. Therefore,  
20 the Reno City Planning Commission complied with the Open Meeting Law.

21 DATED this \_\_\_\_\_ day of April, 2005.

22 BRIAN SANDOVAL  
23 Attorney General

24 By:

25 \_\_\_\_\_  
26 NEIL A. ROMBARDO  
27 Senior Deputy Attorney General  
28 Nevada State Bar No. 6800  
100 North Carson Street

27 <sup>1</sup> Ms. Steiner asserts that two different data bases indicated the address in the notice was incorrect.  
28 However, a public body cannot be responsible to check every single source of information. Considering the  
circumstances, the public body’s reliance upon the public records, its own records, to determine the address was  
more than reasonable.

Carson City, Nevada 89701-4717  
(775) 684-1205

**Attorney General's Office**  
100 N. Carson Street  
Carson City, Nevada 89701-4717

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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of April, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Ellen L. Steiner  
12045 Broken Hill Road  
Reno, Nevada 89511

Patricia A. Lynch, City Attorney  
Allen D. Gibson, Deputy City Attorney  
City of Reno  
Post Office Box 1900  
Reno, Nevada 89505-1900

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An Employee of the Office of the  
Nevada Attorney General



1 was an action item. The Board addressed Ms. Keaton's concerns and took action on this  
2 item.

3 Ms. Keaton alleges that she arrived at the January 4, 2005 meeting 15 minutes prior to  
4 the meeting. At this time, she noticed that three of the five Board members were discussing  
5 issues in the community. This allegation has been denied by the Board members and Lincoln  
6 County District Attorney Philip H. Dunleavy.

7 At the January 4, 2005 meeting, the Board, under agenda item number 8, which stated  
8 "8. \*Old Business" discussed renting the downstairs of Town Hall to Shannon Kirschesh for  
9 her massage therapy practice. The asterisk again indicated that item number 8 on the  
10 agenda was an action item.

11 On January 6, 2005, Ms. Keaton requested copies of the Board's minutes and agendas  
12 for the last year. The secretary stated that she prepared the minutes of the January 4, 2005  
13 meeting, but that she would not be able to produce copies of the Board's minutes and  
14 agendas for the last year. Ms. Keaton has not received copies of the Board's minutes and  
15 agendas for the last year.

16 **III.**

17 **ISSUES**

18 1. Did the Board violate the Open Meeting Law when one of its members reported to  
19 the planning director that Ms. Keaton's item failed?

20 2. Did the Board violate the Open Meeting Law by a quorum of its members discussing  
21 community issues prior to the January 4, 2005 meeting?

22 3. Did item numbers 6 and 8 on the Board's January 4, 2005 agenda fail to meet the  
23 "clear and complete" notice standards in the Open Meeting Law?

24 4. Did the Board violate the Open Meeting Law by not immediately supplying  
25 Ms. Keaton with copies of the Board's minutes and agendas for the last year?<sup>1</sup>

26 \_\_\_\_\_  
27 <sup>1</sup> Ms. Keaton alleges that the Board's minutes failed to meet the legal requirements of the Open Meeting  
28 Law. However, Ms. Keaton's allegation is not specific. This Office reviewed the minutes from the August 18  
2004, September 14, 2004, October 7, 2004, November 15, 2004, and January 4, 2005 meetings, and the  
minutes from each of these meetings appear to comply with the legal requirements found in NRS 241.035.

1 IV.

2 **CONCLUSIONS OF LAW**

3 1. Did the Board violate the Open Meeting Law when one of its members reported to  
4 the planning director that Ms. Keaton's item failed?

5 The Open Meeting Law does not govern comments made by a member of the public  
6 body after a meeting. Therefore, this is not an issue involving the Open Meeting Law.

7 2. Did the Board violate the Open Meeting Law by a quorum of its members discussing  
8 community issues prior to the January 4, 2005 meeting?

9 NRS 241.015(2), in pertinent part, states:

10 2. "Meeting":

11 (a) Except as otherwise provided in paragraph (b), means:

12 (1) The gathering of members of a public body at which a *quorum*  
13 is present to deliberate toward a decision or to take action on any  
14 matter over which the public body has supervision, control,  
15 jurisdiction or advisory power. [Emphasis added.]

14 NRS 241.015(4) states, "[q]uorum' means a simple majority of the constituent membership of  
15 a public body or another proportion established by law."

16 It is alleged here that three members of the Board met 15 minutes prior to the meeting  
17 noticed for January 4, 2005. Three is a simple majority of five and, as a result, is a quorum of  
18 the Board. It is further alleged that these three members discussed topics within the  
19 supervision, control, jurisdiction or advisory power of the Board. The three board members  
20 deny this allegation, and this Office cannot find any other independent proof to support the  
21 allegations. Therefore, at this time, this Office does not have the legal proof necessary to find  
22 a violation of the Open Meeting Law or proceed with legal action.

23 However, this Office warns that if these types of allegations could be supported, this  
24 type of activity is a violation of the Open Meeting Law. Also, because these types of acts  
25 blatantly disregard the Open Meeting Law, this Office would consider immediate legal action  
26 under these circumstances. Therefore, this Office advises the Board to refrain from the types  
27 of alleged activities that invite suspicion.

28 3. Did item numbers 6 and 8 on the Board's January 4, 2005 agenda fail to meet the

1 “clear and complete” notice standards in the Open Meeting Law?

2 NRS 241.020(2)(c) states:

3 2. Except in an emergency, written notice of all meetings must be  
4 given at least 3 working days before the meeting. The notice must  
include:

5 . . .  
(c) An agenda consisting of:

6 (1) A clear and complete statement of the topics scheduled to be  
considered during the meeting.

7 (2) A list describing the items on which action may be taken and  
clearly denoting that action may be taken on those items.

8 Section 7.02 of the NEVADA OPEN MEETING LAW MANUAL states, “[a]genda items must be  
9 described with clear and complete detail so that the public will receive notice in fact of what is  
10 to be discussed by the public body.” In OMLO 99-03, this office opined that generic agenda  
11 items such as “President’s Report,” “Committee Reports,” “New Business,” and “Old  
12 Business” do not provide a clear and complete statement of the topics scheduled to be  
13 considered. Such items should not be listed as action items as they do not adequately  
14 describe items upon which action is to be taken. As a result, it is the responsibility of the  
15 public body to provide clear and complete agendas.

16 The Board listed on its January 4, 2005 agenda as action items “6. \*Correspondence”  
17 and “8. \*Old Business.” Under item number 6, the Board considered Ms. Keaton’s setback  
18 variance and her problem with board member Zelch’s comments after the meeting. Also,  
19 under item number 6, the Board considered Ms. Hewitt’s problem with paying her power bill.  
20 While considering item number 8, the Board discussed Ms. Kirschesh’s request to rent the  
21 downstairs of Town Hall. The Board deliberated over the issue and requested that  
22 Ms. Kirschesh return with insurance information. Neither agenda item “6. \*Correspondence”  
23 nor “8. \*Old Business” clearly and completely indicate to the public what the Board  
24 considered, deliberated, or took action on. As a result, the Board violated the Open Meeting  
25 Law.

26 District Attorney Dunleavy’s correspondence with this Office indicates that the Board  
27 recognizes its agendas failed to comply with the Open Meeting Law. He also indicated that  
28 he provided the Board with legal suggestions on how to comport with the Open Meeting Law

1 in the future. Therefore, at this time, this Office does not see a need to proceed with legal  
2 action against the Board.

3 4. Did the Board violate the Open Meeting Law by not immediately supplying  
4 Ms. Keaton with copies of the Board's minutes and agendas for the last year?

5 NRS 241.035(2) states, in part, "[m]inutes of public meetings are *public records*.  
6 Minutes or audiotape recordings of the meetings must be made available for inspection by the  
7 public within 30 working days after the adjournment of the meeting at which taken."

8 [Emphasis added.] Section 10.05 of the NEVADA OPEN MEETING LAW MANUAL states:

9 The Open Meeting Law requires that minutes and tapes be made  
10 available "for inspection" and does not authorize charging a fee. . . .

11 However, if a person wants a copy of the minutes or tapes that are  
12 public records, public bodies should consult the open records law or  
other statutes dealing with fees to determine what, if any, fees may  
be charged. See NRS chapter 239.

13 Since minutes of a meeting are public records, the analysis must also examine the Public  
14 Records Law, chapter 239 of the NRS. NRS 239.052(1) states:

15 Except as otherwise provided in this subsection, a governmental  
16 entity *may charge a fee* for providing a copy of a public record.  
Such a fee must not exceed the actual cost to the governmental  
17 entity to provide the copy of the public record unless a specific  
statute or regulation sets a fee that the governmental entity must  
18 charge for the copy. A governmental entity *shall not charge a fee*  
for providing a copy of a public record *if a specific statute or*  
19 *regulation requires the governmental entity to provide the copy*  
*without charge*. [Emphasis added.]

20 As a result, a public body must allow a member of the public to "inspect" the minutes of a  
21 public meeting. However, a public body may charge a fee for copying the minutes since the  
22 Open Meeting Law does not require a public body to provide copies of the minutes without a  
23 charge.

24 It is alleged here that Ms. Keaton requested copies of the Board's minutes and  
25 agendas for the last year. The Board was under no obligation to immediately provide those  
26 copies because Ms. Keaton had to pay a fee for the copies, and the Board was entitled to a  
27 reasonable time to prepare the copies. However, the facts indicate that there may have been  
28 some confusion on the part of the Board's assistant, and as a result, the assistant failed to

1 make the minutes and agendas available for inspection to Ms. Keaton.<sup>2</sup> Pursuant to  
2 NRS 241.035 and NRS 239.010, the Board is obligated to make reasonable accommodations  
3 to make past minutes and agendas available for inspection by the public. Since the Board  
4 failed to make those reasonable obligations, it violated the Open Meeting Law.

5 **V.**

6 **CONCLUSION**

7 By its own admission, the Pioche Town Board violated the Open Meeting Law by failing  
8 to provide legally sufficient agenda statements. The Pioche Town Board is also obligated by  
9 law to make past minutes and agendas available for inspection and copying. The Office of the  
10 Nevada Attorney General encourages the Pioche Town Board to use this opinion as a tool to  
11 assist it in avoiding future violations, and this Office also encourages the Board to comply with  
12 the Open Meeting Law by providing "clear and complete" agenda statements for future  
13 meetings. This opinion may be considered by this Office if any future similarly alleged  
14 violations occur.

15 DATED this \_\_\_\_\_ day of April 2005.

16 BRIAN SANDOVAL  
17 Attorney General

18  
19 By:

20 \_\_\_\_\_  
21 NEIL A. ROMBARDO  
22 Senior Deputy Attorney General  
23 Nevada State Bar 6800  
24 100 North Carson Street  
25 Carson City, Nevada 89701-4717  
26 (775) 684-1205

27 \_\_\_\_\_  
28 <sup>2</sup> Please note that there is nothing in the Open Meeting Law that requires the Board's minutes to be filed with the clerk's office as alleged by Ms. Keaton. However, NRS 239.010 of the Public Records Law indicates that public records, in this case the minutes, should be made available for inspection during office hours. Therefore, the minutes should be kept at the Town Hall.

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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of April, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Ann Keaton  
Post Office Box 73  
Pioche, Nevada 89043-0073

Philip Dunleavy  
Lincoln County District Attorney  
Post Office Box 60  
Pioche, Nevada 89043

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An Employee of the Office of the  
Nevada Attorney General





1 “Professional Negotiations Agreement Between the Douglas County School District and the  
2 Douglas County Professional Education Association, 2003-2005” (Collective Bargaining  
3 Agreement), a Level 2 grievance meant that the superintendent would preside over an appeal  
4 hearing of the assistant superintendent’s decision. On November 18, 2004, the  
5 superintendent issued his decision that upheld the assistant superintendent’s original  
6 decision. As a result, the District continued to hold Complainant responsible for the  
7 overpayment.

8 In response to the superintendent’s decision, on November 23, 2004, Complainant filed  
9 a Level 3 grievance. Pursuant to section 2-C-3 of the Collective Bargaining Agreement, the  
10 Board “shall hear the grievance no later than its next regular meeting.” Since Complainant  
11 filed the Level 3 grievance on November 23, 2004, the next Board meeting was scheduled for  
12 December 14, 2004. As a result of the Collective Bargaining Agreement, the contract  
13 obligated the Board to hear the grievance at that meeting.

14 On the afternoon of December 14, 2004, Complainant received a call from a reporter  
15 regarding the Level 3 grievance to be considered by the Board. Complainant told the reporter  
16 that she did not know about the hearing that night. Complainant did not receive notice of the  
17 hearing pursuant to NRS 241.034. Because Complainant had a previous engagement, her  
18 husband attended the meeting on her behalf. At the meeting, the Board decided to continue  
19 the hearing because Complainant could not attend the meeting. The Board informed  
20 Complainant’s husband that the Board would hear the grievance at the January 11, 2005  
21 meeting.

22 The Board scheduled the grievance for the January 11, 2005 meeting. The Board  
23 properly noticed the grievance on the agenda. However, the Board did not provide  
24 Complainant with notice of the meeting pursuant to NRS 241.034. Complainant did attend the  
25 meeting, and the Board denied her grievance by a vote of 7-0.

26 **III.**

27 **ISSUE**

28 Did the Board violate the Open Meeting Law by failing to provide Complainant with

1 written notice pursuant to NRS 241.034?

2 **IV.**

3 **CONCLUSIONS OF LAW**

4 NRS 241.034(1) and (2) states:

- 5 1. A public body *shall not consider* at a meeting whether to:  
6 (a) Take administrative action against a person; or  
7 (b) Acquire real property owned by a person by the exercise of  
8 the power of eminent domain,  
9 unless the public body has given *written* notice to that person of  
10 the time and place of the meeting.  
11 2. The written notice required pursuant to subsection 1 must be:  
12 (a) Delivered personally to that person at least 5 working days  
13 before the meeting; or  
14 (b) Sent by certified mail to the last known address of that person  
15 at least 21 working days before the meeting.  
16 A public body *must receive proof of service* of the written notice  
17 provided to a person pursuant to this section *before* the public  
18 body may consider a matter set forth in subsection 1 relating to  
19 that person at a meeting. [Emphasis added.]

20 This statute is clear that a public body may not consider taking administrative action against a  
21 person unless they provided that person “written” notice and “proof of service” of the written  
22 notice. Therefore, the issue to be decided is whether the Board considered to “take  
23 administrative action against” Complainant in violation of NRS 241.034(1).  
24

25 In *Harris v. Washoe County*, Docket No. 42951 (2004), the Nevada Supreme Court  
26 considered the notice requirement in NRS 241.034. In that case, the Washoe County Board  
27 of Equalization (Board of Equalization) raised the plaintiffs’ taxes. The plaintiffs filed a petition  
28 challenging the county assessor’s valuation of their property. The plaintiffs received a call the  
day before the meeting when the Board of Equalization would hear their petition. The  
plaintiffs sued the Board of Equalization alleging that they were entitled to notice under  
NRS 241.034 of the Open Meeting Law. The court determined that there were two  
reasonable interpretations, one of which was a broad interpretation and the other a narrow  
interpretation, of the phrase “administrative action against a person.” The court, however,  
adopted the county’s position of a more narrow interpretation of the phrase. The court stated,  
“that the phrase ‘administrative action against a person’ should be more narrowly construed to  
include only those actions involving an individual’s characteristics or qualifications, not those

1 of real property.” *Id.* at 5. The court reasoned that property taxes did not involve an  
2 individual’s characteristics or qualifications, and thus the court held that the Open Meeting  
3 Law did not require the Board of Equalization to provide the plaintiffs with personal notice  
4 pursuant to NRS 241.034.

5 Although the facts of the *Harris* case are not the same as the issue at hand, they are  
6 analogous. Here, Complainant requested a grievance hearing regarding whether she  
7 received overpayment for the last two years. The District alleges that it made an error when it  
8 placed Complainant on the salary 2002-2003 salary schedule as an E-10. Whether  
9 Complainant is entitled to this step on the salary schedule does not involve an issue of her  
10 individual character and/or qualifications. Instead, the grievance involves an issue of whether  
11 the District made an error. Thus, the Board’s January 11, 2005 grievance hearing was not the  
12 type of administrative action contemplated in NRS 241.034, and the District did not violate the  
13 Open Meeting Law.

14 **V.**

15 **CONCLUSION**

16 Pursuant to the Nevada Supreme Court’s decision in *Harris*, the Douglas County  
17 School District Board of Trustees did not violate the Open Meeting Law by failing to provide  
18 Complainant with notice pursuant to NRS 241.034. As a result, the Office of the Nevada  
19 Attorney General will not proceed with any legal action and is closing its file on this issue.

20 DATED this \_\_\_\_\_ day of May, 2005.

21 BRIAN SANDOVAL  
22 Attorney General

23  
24 By: \_\_\_\_\_  
25 NEIL A. ROMBARDO  
26 Senior Deputy Attorney General  
27 Nevada State Bar No. 6800  
28 100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of May, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Toni Gumm  
Post Office Box 2716  
Gardnerville, Nevada 89410

John Soderman, Superintendent  
Douglas County School District  
Post Office Box 1888  
Minden, Nevada 89423

Michael A. Nivinskus  
Walther, Key, Maupin, Oats, Cox & LeGoy  
Post Office Box 30000  
Reno, Nevada 89520

\_\_\_\_\_  
An Employee of the Office of the  
Nevada Attorney General



1 Mr. Williams of this discussion.

2 **III.**

3 **ISSUE**

4 Did the Board consider Mr. Williams' character, alleged misconduct, professional  
5 competence, or physical or mental health so as to require the Board to provide personal  
6 notice to him under NRS 241.033 of the Open Meeting Law?

7 **IV.**

8 **CONCLUSIONS OF LAW**

9 NRS 241.033(1), in pertinent part, states, "A public body shall not hold a meeting to  
10 *consider* the character, alleged misconduct, professional competence, or physical or mental  
11 health of any person unless it has given written notice to that person of the time and place of  
12 the meeting." [Emphasis added.] This statute contemplates that the purpose of the individual  
13 agenda item must be to "consider" the person's character, alleged misconduct, professional  
14 competence, or physical or mental health. Here the purpose of the agenda item was to  
15 discuss and possibly take action regarding the recruitment of a town manager as well as a  
16 discussion of all issues relevant to the recruitment of that position. The purpose of the agenda  
17 item was not to consider Mr. Williams' character, alleged misconduct, professional  
18 competence, or physical or mental health. Ms. Miluck argued that the Town of Genoa did not  
19 need a full-time town manager because of the high costs associated with a full-time position,  
20 which included medical and dental benefits. Unfortunately, she chose to disclose  
21 Mr. Williams' alleged dental costs to prove her point. Nevertheless, Ms. Miluck's comments  
22 related to the recruitment of a new town manager because if the other Board members agreed  
23 with her position, the Board would need to modify its announcement and recruitment process.  
24 The mere mention of Mr. Williams' alleged physical health by a Board member did not  
25 unilaterally alter the Board's agenda item. The record does not support the allegation that the  
26 Board directed its "consideration" and deliberation toward Mr. Williams' alleged misconduct,  
27 professional competence, or physical or mental health. As a result, the Board did not owe  
28 Mr. Williams personal notice because the Board did not "consider" his character, alleged

1 misconduct, professional competence, or physical or mental health. Instead, it considered the  
2 recruitment process for a new town manager.

3 **V.**

4 **CONCLUSION**

5 The Open Meeting Law did not require the Genoa Town Advisory Board to personally  
6 notice Mr. Williams because it did not consider his character, alleged misconduct, professional  
7 competence, or physical or mental health. Instead, the Board deliberated over the recruitment  
8 process for a new town manager. The unilateral comments of one Board member that touch  
9 on such matters do not, without facts implicating the conduct of the Board generally, cause a  
10 violation of the notice requirement under NRS 241.033(1). Therefore, the Office of the  
11 Nevada Attorney General finds no violation of the Open Meeting Law and is closing its file on  
12 this issue.

13 DATED this \_\_\_\_\_ day of May, 2005.

14 BRIAN SANDOVAL  
15 Attorney General

16  
17 By: \_\_\_\_\_  
18 NEIL A. ROMBARDO  
19 Senior Deputy Attorney General  
20 Nevada State Bar No. 6800  
21 100 North Carson Street  
22 Carson City, Nevada 89701-4717  
23 (775) 684-1205  
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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of May 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Paul A. Williams, Town Manager  
Genoa Town Advisory Board  
Post Office Box 14  
Genoa, Nevada 89411

\_\_\_\_\_  
An Employee of the Office of the  
Nevada Attorney General



1 comment, if more than 10 people request to speak.” The Board conducted a general public  
2 comment period and also allowed the public to comment on individual agenda items at the  
3 time the Board deliberated about the individual item.

4 During the discussion of Item B, the Chair did not permit public comment after each  
5 subpart. Instead, the Chair treated Item B and its various subparts as one agenda item. The  
6 Chair, however, allowed District Attorney Gammick to address the Board as a staff member  
7 during subpart b of Item B. After the Board discussed Item B in its entirety, the Chair opened  
8 a public comment period to discuss that entire agenda item. During that public comment  
9 period, District Attorney Gammick again addressed the Board, and the complainant,  
10 Mr. Schmidt, also addressed the Board during this item. Mr. Schmidt also addressed the  
11 Board during the public comment period for the other items.

12 **III.**

13 **ISSUE**

14 Did the Board violate the Open Meeting Law by not allowing public comment after each  
15 subpart of Item B?

16 **IV.**

17 **CONCLUSIONS OF LAW**

18 NRS 241.020(2)(c)(3) states:

19 2. Except in an emergency, written notice of all meetings must be  
20 given at least 3 working days before the meeting. The notice must  
include:

21 . . . .  
(c) An agenda consisting of:

22 . . . .  
(3) A period devoted to comments by the general public, if any,  
23 and discussion of those comments. No action may be taken upon  
24 a matter raised under this item of the agenda until the matter itself  
has been specifically included on an agenda as an item upon which  
action may be taken pursuant to subparagraph (2).

25 Section 8.04 of the NEVADA OPEN MEETING LAW MANUAL states:

26 Except during the public comment period required by  
27 NRS 241.020(2)(c)(3), the Open Meeting Law does not mandate  
28 that members of the public be allowed to speak during meetings.  
Some public bodies choose to hear public comment during  
individual agenda items, but that is not a requirement of the Open

1 Meeting Law.

2 NEVADA OPEN MEETING LAW MANUAL, § 8.04 (9<sup>th</sup> ed. 2001). Thus a public body must have a  
3 public comment period. If a public body permits a member of the public to speak during  
4 individual agenda items, the public body may prohibit further comments on individual agenda  
5 items during a general public comment period.

6 The Board did not allow members of the public to discuss each individual subpart of  
7 Item B. The Board did, however, permit District Attorney Gammick to address the Board  
8 during subpart b of Item B. District Attorney Gammick, however, addressed the Board as a  
9 member of its staff. It is a common lawful practice for a public body to receive information  
10 from its staff during individual agenda items. In this case the Board's Chair chose to treat  
11 Item B as one agenda item, which was well within her lawful discretion. The record shows  
12 that members of the public had ample opportunity to comment on Item B and its various  
13 subparts, and as a result, the Board did not violate the Open Meeting Law by treating Item B  
14 as one agenda item.

15 V.

16 **CONCLUSION**

17 The Washoe County Board of County Commissioners met the legal requirements of the  
18 Open Meeting Law, and at this time, the Office of the Nevada Attorney General is closing its  
19 file on this issue.

20 DATED this \_\_\_\_\_ day of May, 2005.

21 BRIAN SANDOVAL  
22 Attorney General

23  
24 By:

25 \_\_\_\_\_  
26 NEIL A. ROMBARDO  
27 Senior Deputy Attorney General  
28 Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of May 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Gary R. Schmidt  
9000 Mt. Rose Highway  
Reno, Nevada 89511

Jonathan D. Shipman  
Washoe County Deputy District Attorney  
Post Office Box 30083  
Reno, Nevada 89520-3083

\_\_\_\_\_  
An Employee of the Office of the  
Nevada Attorney General



1 cannot see where anything with the Bushey name can do any good to counteract what the  
2 family has done in detriment to the north valleys.” North Valleys Citizen Advisory Board  
3 Minutes of the March 14, 2005 meeting.

4 **III.**

5 **ISSUE**

6 Did the Board consider Ms. Bushey’s “character, alleged misconduct, professional  
7 competence, or physical or mental health” so as to require the Board to provide personal  
8 notice to her under NRS 241.033 of the Open Meeting Law?

9 **IV.**

10 **CONCLUSIONS OF LAW**

11 NRS 241.033(1), in pertinent part, states, “A public body shall not hold a meeting to  
12 *consider* the character, alleged misconduct, professional competence, or physical or mental  
13 health of any person unless it has given written notice to that person of the time and place of  
14 the meeting.” [Emphasis added.] This statute contemplates that the purpose of the individual  
15 agenda item must be to “consider” the person’s character, alleged misconduct, professional  
16 competence, or physical or mental health.

17 The purpose of agenda item 14 B was to update the North Valleys Summit held on  
18 February 28, 2005. The purpose of the agenda item was not to consider the “character,  
19 alleged misconduct, professional competence, or physical or mental health” of Ms. Bushey or  
20 her family. Nothing in the record suggests that the Board considered Ms. Bushey’s character  
21 during the presentation or discussion of the agenda item. If Ms. Feero’s comments caused  
22 the discussion and deliberation of agenda item 14 B to focus on Ms. Bushey or Pastor  
23 Bushey’s character, the Open Meeting Law would have required notice pursuant to  
24 NRS 241.033. But that was not the case. Therefore, the Open Meeting Law did not require  
25 the Board to provide Ms. Bushey with notice of the meeting pursuant to NRS 241.033.

26 **V.**

27 **CONCLUSION**

28 The Open Meeting Law did not legally require the North Valleys Citizen Advisory Board

1 to provide notice to Ms. Bushey pursuant to NRS 241.033 because the unilateral comments  
2 by one Board member did not cause the Board to redirect its agenda item to “consider the  
3 character” of Ms. Bushey or Pastor Bushey. Therefore, the North Valleys Citizen Advisory  
4 Board did not violate the Open Meeting Law, and the Office of the Nevada Attorney General is  
5 closing its file on this issue at this time.

6 DATED this \_\_\_\_\_ day of May, 2005.

7 BRIAN SANDOVAL  
8 Attorney General

9  
10 By:

11 \_\_\_\_\_  
12 NEIL A. ROMBARDO  
13 Senior Deputy Attorney General  
14 Nevada State Bar No. 6800  
15 100 North Carson Street  
16 Carson City, Nevada 89701-4717  
17 (775) 684-1205



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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of May, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Lorraine Bushey  
463 Oregon Boulevard  
Reno, Nevada 89506

Blaine E. Cartlidge  
Washoe County Deputy District Attorney  
Post Office Box 30083  
Reno, Nevada 89520-3083

---

An Employee of the Office of the  
Nevada Attorney General

**STATE OF NEVADA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**NEVADA DEPARTMENT OF JUSTICE**

In the Matter of:

NEVADA STATE HIGH SCHOOL RODEO  
ASSOCIATION

Attorney General File No. 05-015  
OMLO 2005-11

**I.**

**INTRODUCTION**

In a letter received April 6, 2005, by the Office of the Nevada Attorney General, Ms. Ann Johnstone filed a complaint with this Office alleging a violation of the Nevada Open Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Ms. Johnstone alleges that the Nevada State High School Rodeo Association (Association) violated the Open Meeting Law at its February 25, 2005 meeting.

The Office of the Nevada Attorney General has primary jurisdiction to investigate and prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In investigating this matter, this Office reviewed the complaint, agenda, and supporting documents.

**II.**

**FINDINGS OF FACT**

The Association is a non-profit corporation as evidenced by the records on file with the Nevada Secretary of State (Corporation Number C583-1967). The Association receives revenue from the State of Nevada license plates for support of rodeo activities. The Association conducted a meeting on February 25, 2005. The Association posted an agenda for that meeting and kept minutes of the meeting.

**III.**

**ISSUE**

Did the Association violate the Open Meeting Law at its February 25, 2005 meeting?

1 IV.

2 **CONCLUSIONS OF LAW**

3 Before proceeding with an analysis of whether the Association violated the Open  
4 Meeting Law, it must first be determined whether the Association is a “public body” that must  
5 comply with the Open Meeting Law.

6 NRS 241.015(3) defines a “public body” as:

7 Except as otherwise provided in this subsection, “public body”  
8 means any administrative, advisory, executive or legislative body  
9 of the State or a local government which expends or disburses or  
10 is supported in whole or in part by tax revenue or which advises or  
11 makes recommendations to any entity which expends or disburses  
12 or is supported in whole or in part by tax revenue, including, but  
not limited to, any board, commission, committee, subcommittee or  
other subsidiary thereof and includes an educational foundation as  
defined in subsection 3 of NRS 388.750 and a university  
foundation as defined in subsection 3 of NRS 396.405. “Public  
body” does not include the Legislature of the State of Nevada.

13 Section 3.09 of the NEVADA OPEN MEETING LAW MANUAL states, “[a] private, non-profit  
14 corporation is a public body if it is formed by a public body, acts in an administrative, advisory  
15 and executive capacity in performing local governmental functions, and is *supported* in part by  
16 tax revenue from the public body.” NEVADA OPEN MEETING LAW MANUAL, § 3.09 (9<sup>th</sup> ed. 2001)  
17 (emphasis added).

18 Pursuant to NRS 482.37938, the Nevada Department of Motor Vehicles (DMV) issued  
19 a license plate to support the Reno Rodeo Foundation and the Association. For a member of  
20 the public to receive such a license plate, he/she must pay a \$35.00 fee “in addition to all  
21 other applicable registration and license fees and governmental services taxes.”  
22 NRS 482.37938(3). This additional fee is a choice by a member of the public to pay what  
23 amounts to a charitable donation to the Association; this additional fee is not a tax being  
24 levied on all members of the public who utilize the services of the DMV. Therefore, the  
25 Association is not supported in whole or in part by tax dollars nor does it advise a public body  
26 that is supported in whole or in part by tax dollars. Accordingly, the Association does not meet  
27 the definition of a “public body” for purposes of the Open Meeting Law.

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V.

**CONCLUSION**

The Nevada State High School Rodeo Association is not a “public body” for purposes of the Open Meeting Law and, as a result, does not have to comply with the Open Meeting Law. At this time, the Office of the Nevada Attorney General is closing its file on this issue.

DATED this \_\_\_\_\_ day of June, 2005.

BRIAN SANDOVAL  
Attorney General

By: \_\_\_\_\_  
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of June, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

Ann Johnstone  
HC 61 Box 65A  
Battle Mountain, Nevada 89820

Michelle Rankin, State Secretary  
Nevada State High School Rodeo Association  
Post Office Box 458  
Alamo, Nevada 89001

Michael R. Montero  
Lemons, Grundy & Eisenberg  
6005 Plumas Street, Suite 300  
Reno, Nevada 89509-6069

\_\_\_\_\_  
An Employee of the Office of the  
Nevada Attorney General

1 **STATE OF NEVADA**  
2 **OFFICE OF THE ATTORNEY GENERAL**  
3 **NEVADA DEPARTMENT OF JUSTICE**

4 In the Matter of: )  
5 Churchill County Board of School Trustees ) Attorney General File No. 05-028  
6 )

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7 **I.**

8 **INTRODUCTION**

9 In a letter received June 9, 2005, by the Office of the Nevada Attorney General, Ms.  
10 Marlene Garcia filed a complaint with this Office alleging a violation of the Nevada Open  
11 Meeting Law of chapter 241 of the Nevada Revised Statutes. In particular, Ms. Garcia  
12 alleges that the Churchill County Board of School Trustees (Board) violated the Open Meeting  
13 Law at its May 20, 2005, meeting.

14 The Office of the Nevada Attorney General has primary jurisdiction to investigate and  
15 prosecute alleged violations of the Open Meeting Law and issues this opinion pursuant to that  
16 authority. This opinion is issued as a guideline for enforcing the Open Meeting Law. In  
17 investigating this matter, this Office reviewed the complaint, agenda, supporting documents,  
18 and audiotape recordings.

19 **II.**

20 **FINDINGS OF FACT**

21 On May 20, 2005, the Board held a properly noticed meeting. The notice listed a  
22 closed session at 6 p.m. to discuss the competence and character of superintendent  
23 applicants per NRS 241.030. The notice also listed a regular session at 7 p.m. to receive a  
24 report from the Superintendent's Search Committee and Consultant (Search Committee) and  
25 to take action related to interviews of finalists.

26 During the time scheduled for the 6 p.m. closed session, the Chair did not entertain a  
27 motion to close the meeting. Instead, she indicated to the Board that a potential legal issue

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1 existed. As a result, the Board contacted its lawyer, Mr. Don Lattin, via telephone to discuss  
2 the potential legal issues.

3         During its discussion with Mr. Lattin, the Board kept the meeting open and recorded its  
4 discussion with Mr. Lattin. The potential legal issue was that two members of the Search  
5 Committee wrote recommendation letters on behalf of an applicant. Mr. Lattin informed the  
6 Board that he believed that these actions created a conflict of interest. A discussion ensued  
7 between Mr. Lattin and the Board regarding this issue. The discussions revolved around the  
8 issue of the superintendent search and whether the Board should even go into a closed  
9 meeting to consider the competence and character of the applicants because the conflict  
10 tainted the process. During this discussion, neither the Board nor Mr. Lattin revealed the  
11 identity of the two members of the Search Committee by name, but their professional  
12 positions were disclosed during the meeting. Because of the nature of their professional  
13 positions, a member of the public could have easily discerned their identities. After further  
14 deliberations, the Board never moved to close the meeting, and as a result, the Board  
15 adjourned the closed session portion of the meeting and recessed until 7 p.m., at which time  
16 it would begin its regular meeting.

17         At 7 p.m. the Board reconvened to conduct its regularly scheduled meeting. There  
18 was one action item on the agenda for that meeting which stated, “[r]eport and  
19 Recommendations from Superintendent’s Search Committee and Consultant; Board Action  
20 Related to Interviews of Finalists . . . .” The Board decided that after its discussion with Mr.  
21 Lattin it would not consider the applicants presented by the Search Committee. Instead, the  
22 Board took two actions. First, the Board deferred the Search Committee’s recommendations  
23 until the next Board meeting, and in the interim, the Search Committee was to meet,  
24 reconsider the potential applicants, and bring another recommendation to the Board.  
25 Second, it directed Mr. Lattin to author a letter to the two members regarding the ethical  
26 issues. The Board then adjourned the meeting.

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1 At the conclusion of the meeting, the Complainant requested copies of the two  
2 recommendation letters and the resumes of the applicants recommended by the Search  
3 Committee. The Board refused to provide this information to her.

4 **III.**

5 **ISSUES**

6 A. Did the Board violate the Open Meeting Law by not providing sufficient notice  
7 on the agenda of what was to be discussed at the meeting?

8 B. Did the Board violate the Open Meeting Law by taking action on topics that were  
9 not on the agenda?

10 C. Did the Board violate the Open Meeting Law by discussing the two members of  
11 the Search Committee without noticing them pursuant to NRS 241.033?

12 D. Did the Board violate the Open Meeting Law by failing to provide the  
13 Complainant with support material that she requested?

14 **IV.**

15 **CONCLUSIONS OF LAW**

16 **A. Did the Board violate the Open Meeting Law by not providing sufficient**  
17 **notice on the agenda of what was to be discussed at the meeting?**

18 NRS 241.020(2)(c)(1) states that a public body must notice all of its meetings “at least  
19 3 working days before the meeting,” and as a part of the notice, there must be an agenda that  
20 consists of “[a] clear and complete statement of the topics scheduled to be considered during  
21 the meeting.” Section 7.02 of the NEVADA OPEN MEETING LAW MANUAL states that a public  
22 body should “[a]lways keep in mind the purpose of the agenda is to give the public notice of  
23 what its government is doing, has done, or may do.” NEVADA OPEN MEETING LAW MANUAL,  
24 § 7.02 (9<sup>th</sup> ed. 2001). That same section of the NEVADA OPEN MEETING LAW MANUAL also  
25 states, “[a]gendas should be written in a manner that actually gives notice to the public of the  
26 items anticipated to be brought up at the meeting.” NEVADA OPEN MEETING LAW MANUAL,  
27 § 7.02 (9<sup>th</sup> ed. 2001).

28 *///*



1 Here the Board's agenda item for the closed meeting stated, "[r]eview and Discussion  
2 of Competence and Character of Superintendent Applicants as Recommended by the  
3 Superintendent Search Committee Per NRS 241.030." The Board's agenda item for the open  
4 meeting stated, "[r]eport and Recommendations from Superintendent's Search Committee  
5 and Consultant; Board Action Related to Interviews of Finalists . . . ." Both agenda  
6 statements clearly indicated the topic to be deliberated and considered by the Board, which  
7 was the Search Committee's recommendations for the superintendent position. The Board  
8 extended its discussion to the conflict of interest issue. This discussion, however, directly  
9 related to the Search Committee's recommendations because the discussion related to  
10 whether the Board should accept the Search Committee's recommendations. Therefore, the  
11 Board did not violate the Open Meeting Law by discussing the conflict of interest issue during  
12 the time scheduled for the closed meeting.

13 **B. Did the Board violate the Open Meeting Law by taking action on topics that**  
14 **were not on the agenda?**

15 NRS 241.015(1), in pertinent part, states: "'Action' means: (a) A decision made by a  
16 majority of the members present during a meeting of a public body; or (b) A commitment or  
17 promise made by a majority of the members present during a meeting of a public body." In  
18 *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003), the Nevada Supreme  
19 Court favorably cited the *Gardner* case from Texas in analyzing the sufficiency of notice. In  
20 *Gardner v. Herring*, 21 S.W.3d 767, 773 (Tex. Ct. App. 2000), the Court of Appeals of Texas  
21 stated, "In disclosing that some action will be taken, the notice need not mention all possible  
22 results which may arise." In *Sandoval*, the Nevada Supreme Court held that an agenda  
23 statement should "give the public clear notice of the topics to be discussed at public meetings  
24 so that the public can attend a meeting when an issue of interest will be discussed."  
25 *Sandoval*, 119 Nev. at 155, 67 P.3d at 906. As a result, it is the position of this Office that an  
26 agenda need not include every conceivable action the Board may take in relation to an  
27 agenda item, but it must provide the public with clear notice of the topics to be discussed.

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1 The Board twice took action at the May 20, 2005 meeting. First, it took action to defer  
2 the Search Committee's recommendations until the next Board meeting and required the  
3 Search Committee to present the Board with new recommendations. Second, the Board took  
4 action to direct Mr. Lattin to send a letter to the two members of the Search Committee that  
5 caused the conflict of interest. The issues raised in this factual scenario provide an excellent  
6 example why the Open Meeting Law does not require an agenda to list every possible action.  
7 Here the Board could not possibly foresee the conflict of interest that occurred. However,  
8 under the circumstances, the Board was compelled to take some type of action to resolve the  
9 issue. Therefore, the Board did not violate the Open Meeting Law because its actions were  
10 properly related to the noticed items.

11 **C. Did the Board violate the Open Meeting Law by discussing the two**  
12 **members of the Search Committee without noticing them pursuant to NRS 241.033?**

13 NRS 241.033, in pertinent part, states:

- 14 1. A public body shall not hold a meeting to consider the  
15 character, alleged misconduct, professional competence, or  
16 physical or mental health of any person unless it has given written  
17 notice to that person of the time and place of the meeting. Except  
18 as otherwise provided in subsection 2, the written notice must be:  
(a) Delivered personally to that person at least 5 working days  
before the meeting; or  
(b) Sent by certified mail to the last known address of that person  
at least 21 working days before the meeting.

19 This Office previously opined that it will consider the actual discussion at a meeting to  
20 determine whether notice is required pursuant to NRS 241.033. See OMLO 2002-24 (May  
21 28, 2003). In doing so, this Office will look to see if the public body considered, deliberated  
22 over, or thought seriously about the person's character, alleged misconduct, professional  
23 competence, or physical or mental health. See *generally* OMLO 2002-34 (August 2, 2002).

24 The Board did not identify the two members of the Search Committee that created the  
25 conflict situation. In fact, the Board and the Board's legal counsel went to great lengths to  
26 avoid mentioning the two members of the Search Committee by name, but during the  
27 discussion, the Board ended up disclosing the employment positions of both members.  
28 Because of the nature of their positions, a member of the public could easily discern their

1 identities. However, the mere mentioning of a person's name or reference to a known  
2 person does not necessarily require a public body to provide notice pursuant to NRS  
3 241.033. In this instance, the Board did "not hold a meeting" to consider these two  
4 members' alleged misconduct. NRS 241.033(1). To the contrary, the Board held the  
5 meeting to consider the character of the applicants for superintendent. The Board did not  
6 spend any time considering these two members' conduct except to determine the negative  
7 impact their actions had on the Search Committee's recommendations, if any. Any  
8 reference made of the two members of the Search Committee was tangential. As a result,  
9 the Open Meeting Law did not require the Board to notice the two committee members  
10 discussed at the May 20, 2005 meeting.

11 **D. Did the Board violate the Open Meeting Law by failing to provide the**  
12 **Complainant with support material that she requested?**

13 In pertinent part, NRS 241.020 states:

14 5. Upon any request, a public body shall provide, at no charge, at  
15 least one copy of:

- 16 (a) An agenda for a public meeting;  
17 (b) A proposed ordinance or regulation which will be discussed at  
18 the public meeting; and  
19 (c) *Any other supporting material provided to the members of the  
20 public body for an item on the agenda, except materials:*  
21 (1) Submitted to the public body pursuant to a nondisclosure or  
22 confidentiality agreement;  
23 (2) *Pertaining to the closed portion of such a meeting of the public  
24 body; or*  
25 (3) Declared confidential by law.

26 If the requester has agreed to receive the information and material  
27 set forth in this subsection by electronic mail, the public body shall,  
28 if feasible, provide the information and material by electronic mail.  
[Emphasis added.]

1 In OMLO 98-01, this Office opined that agenda support material must be made  
2 "immediately available for pick up at the counter at the time it is sent out to board members,  
3 and copies should also be made available at the meeting." Section 6.06 of the OPEN MEETING  
4 LAW MANUAL states, "[w]hen a public body is interviewing candidates for a vacant position in  
5 an *open* session of the meeting, copies of the resumes may not be refused by the public body

1 on the grounds” that the applicant might suffer ramifications related to his/her current  
2 employment. [Emphasis added.]

3 Here the Complainant requested the two letters of recommendation from the public  
4 body and the resumes of the applicants recommended by the Search Committee. The public  
5 body, however, refused to provide her copies of the letters of recommendation or the  
6 resumes. The requested information pertained to a noticed meeting that could have been  
7 held to consider the applicants’ competence and character. At the time the request was  
8 made by the Complainant, neither the Board nor the Search Committee had disclosed the  
9 requested information in an open meeting. As a result, pursuant to NRS 241.020(5)(c)(2), the  
10 Open Meeting Law did not obligate the Board to provide the requested information because it  
11 was information that pertained to a meeting that could have legally been closed by the Board.  
12

13 **V.**

14 **CONCLUSION**

15 The Churchill County Board of School Trustees complied with the Open Meeting Law,  
16 and as a result, this Office is closing its file on these issues at this time.

17 DATED this 29th day of August, 2005.

18 BRIAN SANDOVAL  
19 Attorney General

20  
21 By: \_\_\_\_\_  
22 NEIL A. ROMBARDO  
23 Senior Deputy Attorney General  
24 Nevada State Bar No. 6800  
25 100 North Carson Street  
26 Carson City, Nevada 89701-4717  
27 (775) 684-1205  
28

**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 29th day of August, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

MARLENE J GARCIA REPORTER  
LAHONTAN VALLEY NEWS  
PO BOX 1297  
FALLON NV 89407

DONN LIVONI SUPERINTENDENT  
CHURCHILL COUNTY SCHOOL DISTRICT  
545 EAST RICHARDS ST  
FALLON NV 89406

---

An Employee of the Office of the  
Nevada Attorney General



1 Weber told the Complainant to leave the meeting or she would have him removed. The  
2 Complainant chose to leave the meeting.

3 **III.**

4 **ISSUES**

5 A. Did the Board violate the Open Meeting Law by stating that the Board could not  
6 respond to public comment?

7 B. Did the Board violate the Open Meeting Law by removing the Complainant from  
8 the open meeting?

9 **IV.**

10 **CONCLUSIONS OF LAW**

11 **A. Did the Board violate the Open Meeting Law by stating that the Board**  
12 **could not respond to public comment?**

13 NRS 241.020(2)(c)(3) states:

14 2. Except in an emergency, written notice of all meetings must be  
15 given at least 3 working days before the meeting. The notice must  
include:

16 . . . .  
(c) An agenda consisting of:

17 . . . .  
(3) A period devoted to comments by the general public, if any,  
18 and *discussion of those comments*. No action may be taken upon  
19 a matter raised under this item of the agenda until the matter itself  
20 has been specifically included on an agenda as an item upon which  
action may be taken pursuant to subparagraph (2). [Emphasis  
added.]

21 In OMLO 2001-56 (December 10, 2001), this Office opined that “discussion is not  
22 required, nor is it prohibited” by the Open Meeting Law during the period devoted for public  
comment pursuant to NRS 241.020(2)(c)(3).

23 Here the Board refused to answer the inquiries of the Complainant, and the  
24 Chairwoman stated that the law prohibited the Board from responding to the comments of the  
25 public. The Open Meeting Law does not require the Board to answer the Complainant’s  
26 inquiries. However, the Open Meeting Law does not prohibit the Board from discussing the  
27 public’s comments. In fact, the statute specifically states that the Board may discuss the  
28

1 public's comments during the public comment period. Although Chairwoman Weber's  
2 misrepresentation of the law did not amount to a per se violation of the Open Meeting Law,  
3 this position of the Board may create a chilling effect on public comment resulting in a  
4 violation of the Open Meeting Law.<sup>1</sup> As a result, this Office advises that the Board change its  
5 policy of stating that the law prohibits the Board from commenting on statements made by the  
6 general public.<sup>2</sup>

7 **B. Did the Board violate the Open Meeting Law by removing the Complainant**  
8 **from the open meeting?**

9 This Office has always opined that a public body may establish "[r]easonable rules and  
10 regulations that ensure orderly conduct of a public meeting and ensure orderly behavior on  
11 the part of those persons attending the meeting . . . ." NEVADA OPEN MEETING LAW MANUAL,  
12 § 8.04 (9<sup>th</sup> ed. 2001). For example, the Open Meeting Law does not require a public body to  
13 tolerate comments that are "willfully disruptive of the meeting by being irrelevant, repetitious,  
14 slanderous, offensive, inflammatory, irrational or amounting to personal attacks . . . ." *Id.*  
15 Section 8.05 of the NEVADA OPEN MEETING LAW MANUAL states that the chair of a public body  
16 may, without the vote of the public body, "declare a recess to remove a person who is  
17 disrupting the meeting."

18 Here the Complainant admits that he called the chair a "humbug," which is a personal  
19 attack. Further, the Complainant insisted that the Board permit him the opportunity to discuss  
20 his perceived "due process" concern, which was not a relevant issue related to the agenda.  
21 These actions by the Complainant amounted to a willful disruption of the Board's meeting.  
22 Therefore, the Board, in particular Chairwoman Weber, acted reasonably by expelling the  
23 Complainant from the meeting, and the Board did not violate the Open Meeting Law.

24 ///

25 \_\_\_\_\_  
26 <sup>1</sup> "[A]ny practice or policy that discourages or prevents public comment, even if technically in compliance  
27 with the law, may violate the spirit of the Open Meeting Law." See NEVADA OPEN MEETING LAW MANUAL,  
28 § 8.04 (9<sup>th</sup> ed. 2001) quoting from OMLO 99-11 (August 26, 1999).

<sup>2</sup> This Office suggests that at the conclusion of the public comment period or after each individual public  
member's comments, the Chairperson ask the Board members whether they would like to address the comments  
made by the public.



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V.

**CONCLUSION**

The Washoe County Board of Commissioners did not commit a per se violation by misrepresenting that the Open Meeting Law prohibits the public body from discussing comments made by the general public during the public comment period. However, the continuation of this policy by the Board may result in a violation of the Open Meeting Law depending upon its effect on the Board's public comment period. With regard to the Board requesting that the Complainant leave the meeting, the evidence supports that the Board acted reasonably, and as a result, the Board did not violate the Open Meeting Law.

DATED this \_\_\_\_\_ day of August, 2005.

BRIAN SANDOVAL  
Attorney General

By: \_\_\_\_\_  
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1205

**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of August, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

GUY P FELTON III  
1220 SALEM PLACE #5  
RENO NV 89509

BONNIE WEBER  
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\_\_\_\_\_  
An Employee of the Office of the  
Nevada Attorney General



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III.

**ISSUE**

Did the Authority violate the Open Meeting Law by allowing two members of the public to comment during the consideration of a particular agenda item, but prohibiting the complainant from commenting at the same time?

IV.

**CONCLUSIONS OF LAW**

NRS 241.020(2)(c)(3) states:

2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:

.....

(c) An agenda consisting of:

.....

(3) A period devoted to comments by the general public, if any, and discussion of those comments. No action may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to subparagraph (2).

Section 8.04 of the Nevada Open Meeting Law Manual states:

Except during the public comment period required by NRS 241.020(2)(c)(3), the Open Meeting Law does not mandate that members of the public be allowed to speak during meetings. Some public bodies choose to hear public comment during individual agenda items, but that is not a requirement of the Open Meeting Law.

Although the Open Meeting Law does not require public bodies to permit members of the public to comment on particular agenda items, this office believes that the statutory intent is for public bodies to treat members of the public equally with regard to addressing the public body. For instance, this office has opined: "A public body's restrictions must be neutral as to the viewpoint expressed, but the public body may prohibit comment if the content of the comments is a topic that is not relevant to, or within the authority, of the public body. . . ." OPEN MEETING LAW MANUAL, § 8.04 (9<sup>th</sup> ed. 2001). If the law permitted public bodies to treat members of the public differently, it would allow for abuses of the open meeting process by

1 public bodies. For example, the chair of a public body may choose to only allow members of  
2 the public supporting his/her point of view to comment during a particular agenda item. The  
3 chair could then relegate all opposing points of view to the public comment period after the  
4 agenda item. Such a result is absurd because it creates inequity among members of the  
5 public. Thus, members of the public must be treated equally under the Open Meeting Law  
6 with regard to making public comment and failure to do so by a public body is a violation of  
7 the Open Meeting Law.

8 Here, it is not disputed by the Authority that it permitted two members of the public to  
9 comment on the Authority's new Honolulu project, but at the same time, prohibited the  
10 complainant from commenting on that project. Because the Authority treated similarly  
11 situated members of the public differently, it violated the Open Meeting Law. However, the  
12 complainant had the opportunity to address the Authority on this project during the general  
13 public comment period, and the particular agenda item at issue was a discussion-only item.  
14 Therefore, the Authority's violation was *de minimis* and will not result in litigation at this time.

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V.

**CONCLUSION**

The Las Vegas Housing Authority violated the Open Meeting Law by permitting two members of the public to comment during a particular agenda item and, at the same time, prohibited another member of the public from commenting during the same agenda item. In the future, the Office of the Nevada Attorney General advises the Las Vegas Housing Authority to act in a manner consistent with this opinion and treat members of the public equally with regard to making public comment during an open meeting. Failure by the Las Vegas Housing Authority to act in a manner consistent with this opinion may lead to future litigation.

DATED this \_\_\_\_\_ day of October, 2005.

BRIAN SANDOVAL  
Attorney General

By: \_\_\_\_\_  
NEIL A. ROMBARDO  
Senior Deputy Attorney General  
Nevada State Bar No. 6800  
100 North Carson Street  
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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of October, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

JERRY M. NEAL, SECRETARY  
THE MARBLE MANOR & MARBLE MANOR  
ANNEX HOUSING RESIDENT COUNCIL  
814 M STREET  
LAS VEGAS, NV 89106

PARVIS GHADIRI, EXECUTIVE DIRECTOR  
LAS VEGAS HOUSING AUTHORITY  
340 NORTH 11<sup>TH</sup> STREET  
LAS VEGAS, NV 89101

SCOTT A. MARQUIS, ESQ.  
MARQUIS & AURBACH  
ATTORNEYS AT LAW  
10001 PARK RUN DRIVE  
LAS VEGAS, NV 89145

\_\_\_\_\_  
An Employee of the Office of the Nevada Attorney General





1 request, the assistant city manager, through the human resources department, set up  
2 meetings with each council member and the mayor. The staff intended these meetings as an  
3 opportunity to “meet and greet” the top candidate and for no other purpose. On  
4 July 14, 2005, the top candidate for the police chief position, Mr. Kerstein, met with Council  
5 Members Cyphers and Hafen individually and met with Mayor Gibson and Council Member  
6 Clark collectively. A quorum of the Council was not present during any of the “meet and  
7 greet” meetings.<sup>1</sup> During the meetings, general discussions occurred between the top  
8 candidate and the members of the Council. No council member indicated his acceptance of  
9 Mr. Kerstein as police chief. After these meetings, the council members did not share their  
10 thoughts about Mr. Kerstein with other members of the Council until the properly noticed  
11 August 16, 2005 meeting.<sup>2</sup> However, prior to the meetings, on July 13, 2005, Assistant City  
12 Manager Calhoun stated that a candidate would not be picked until after the “meet and greet”  
13 meetings with the Council.<sup>3</sup>

14 **III.**

15 **ISSUE**

16 Did the “meet and greet” meetings with the top candidate for the police chief position  
17 by council members amount to a “Meeting” for purposes of the Open Meeting Law?

18 **IV.**

19 **CONCLUSIONS OF LAW**

20 NRS 241.015(2) defines “Meeting” as:

21 2. “Meeting”:

22 (a) Except as otherwise provided in paragraph (b), means:

23 (1) The gathering of members of a public body at which a quorum  
24 is present to deliberate toward a decision or to take action on any  
25 matter over which the public body has supervision, control,  
26 jurisdiction or advisory power.

27 (2) Any series of gatherings of members of a public body at which:

28 <sup>1</sup> Since the Council consists of 5 members, a quorum of the Council is 3 members pursuant to  
NRS 241.015(4).

<sup>2</sup> This office received affidavits under penalty of perjury from Mayor Gibson, Council Member Hafen, and  
Assistant City Manager Calhoun stating the facts adopted herein.

<sup>3</sup> “Henderson close to naming new police chief,” *Las Vegas Sun*, July 13, 2005.

- (I) Less than a quorum is present at any individual gathering;
- (II) The members of the public body attending one or more of the gatherings collectively constitute a quorum; and
- (III) The series of gatherings was held with the specific intent to avoid the provisions of this chapter.

.....

In *Dewey v. Redevelopment Agency of the City of Reno*, 119 Nev. 87, 67 P.3d 1070 (2003), the Nevada Supreme Court provided significant analysis regarding “serial communications.” In *Dewey*, the Redevelopment Agency for the City of Reno (Agency) owned the Mapes Hotel, a historic landmark listed on the National Trust for Historic Preservation. In 1999, the Agency adopted a resolution in which it would accept bids to rehabilitate the Mapes Hotel. The Agency’s staff put together a request for proposals (RFP), which was sent to more than 580 developers. In response to the RFP, the Agency received six proposals to rehabilitate the Mapes Hotel.

On August 31, 1999, the Agency’s staff conducted two private back-to-back briefings with a non-quorum of the Agency attending each briefing; three members attended one briefing and two members attended the other briefing. For the purposes of an Agency meeting, a quorum was four or more members. The purpose of these meetings was to inform the Agency members of potential issues regarding the RFP responses. The testimony at trial was clear that the Agency members neither provided their opinions, voted on the issue, nor were they polled by staff as to their opinions or potential votes at the briefings. The purpose of the briefings was to provide Agency members with information regarding a complex public policy issue.

The Court stated that the record did not provide substantial evidence that the Agency member’s thoughts, questions, or opinions from one briefing were shared with the members of the other briefing. There was also no evidence of polling by the Agency’s staff to determine the opinions or potential votes of the Agency’s members. Further, there was no evidence in the record that the briefings resulted in the Agency taking action or deliberating on the issue. Finally, the record indicated that the Agency’s staff intended to comply with the Open Meeting Law in conducting the briefings in the back-to-back fashion without a quorum of members. As a result, the Court held that substantial evidence did not exist to prove the

1 briefings resulted in serial communications creating a constructive quorum and that the  
2 Agency's back-to-back briefings were not "meetings" for purposes of the Open Meeting Law.

3 Here, the Attorney General's Office is concerned with Assistant City Manager  
4 Calhoun's comments that a candidate would not be picked until after the "meet and greet"  
5 meetings with the council members. This comment could be construed that the staff intended  
6 to poll the council members regarding their approval of Mr. Kerstein. However, there is no  
7 evidence to suggest any polling occurred. In *Dewey*, the Court stated that because a non-  
8 quorum of the public body was present at each briefing, the complaining party must provide  
9 substantial evidence to prove "serial communications." *Id.* at 100. Therefore, the issue in this  
10 case is whether the statement of the assistant city manager equates to "substantial evidence"  
11 resulting in a finding that the Council conducted "serial communications" in violation of the  
12 Open Meeting Law.

13 "Substantial evidence" is defined as "that quantity and quality of evidence which a  
14 reasonable man could accept as adequate to support a conclusion." *State Employment*  
15 *Security Department v. Hilton Hotels Corp.*, 102 Nev. 606, 608, 729 P.2d 497 (1986) quoting  
16 from *Robertson Transportation Co. v. Public Service Commission*, 159 N.W. 2d 636, 638  
17 (Wis. 1968). Although the statement made by the assistant city manager could arguably  
18 indicate that the Council or its staff desired some type of acquiescence to Mr. Kerstein's hire  
19 through "serial communications," the evidence collected by this office contradicts that  
20 conclusion. First, the assistant city manager provided an affidavit under penalty of perjury  
21 that he made the introductions of Mr. Kerstein to the members of the Council. His affidavit  
22 further stated that the members of the Council neither commented, expressed concerns, nor  
23 acquiesced to Mr. Kerstein's hire as police chief after the meetings. The affidavit also stated  
24 that the meetings were social in nature. Second, the affidavits of Mayor Gibson and  
25 Councilman Hafen confirmed that the meetings were social in nature and that they did not  
26 discuss or deliberate about the candidate until the open meeting on August 16, 2005. Third,  
27 the response by the City Attorney's Office stated that staff's intent was to comply with the  
28 Open Meeting Law and not to poll the Council. There has been no substantial evidence

1 provided to this office that the Council intended to avoid the requirements of the Open  
2 Meeting Law.

3 **V.**

4 **CONCLUSION**

5 In conclusion, the evidence indicates that the Henderson City Council did not violate  
6 the Open Meeting Law because the series of communications did not amount to a "meeting"  
7 under the Open Meeting Law, NRS 241.015(2)(a)(2). However, the comments of the  
8 assistant city manager do create a concern, and this office recommends that under similar  
9 circumstances the City of Henderson clearly state the process to the public in order to prevent  
10 the appearance of impropriety.

11 DATED this \_\_\_\_\_ day of October, 2005.

12 BRIAN SANDOVAL  
13 Attorney General

14  
15 By: \_\_\_\_\_  
16 NEIL A. ROMBARDO  
17 Senior Deputy Attorney General  
18 Nevada State Bar No. 6800  
19 100 North Carson Street  
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21 (775) 684-1205  
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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of October, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

MATT HUFFMAN METRO EDITOR  
LAS VEGAS SUN  
2275 CORPORATE CIRCLE SUITE 300  
HENDERSON NV 89074

HENDERSON CITY COUNCIL  
ATT MONICA SIMMONS CITY CLERK  
CITY HALL  
240 WATER STREET 1<sup>ST</sup> FLOOR  
HENDERSON NV 89074

SHAUNA HUGHES CITY ATTORNEY  
OFFICE OF THE HENDERSON CITY ATTORNEY  
240 WATER STREET 4<sup>TH</sup> FLOOR  
HENDERSON NV 89009

\_\_\_\_\_  
An Employee of the Office of the Nevada Attorney General



1 discusses issues regarding water supply relevant to each officer's department. The group's  
2 primary purpose is to make each department in Fernley aware of the issues confronting the  
3 other departments within Fernley. By exchanging this information, it ensures that Fernley's  
4 departments have a consistent response to issues regarding water supply and services. The  
5 "Water Team" was not created by a public body, does not advise a public body, and does not  
6 vote or act as a "collegial body."

7 **III.**

8 **ISSUE**

9 Is the "Water Team" considered a public body for the purposes of compliance with the  
10 Open Meeting Law?

11 **IV.**

12 **CONCLUSIONS OF LAW**

13 NRS 241.015(3) defines a "public body" as:

14 Except as otherwise provided in this subsection, "public body"  
15 means any administrative, advisory, executive or legislative body  
16 of the State or a local government which expends or disburses or  
17 is supported in whole or in part by tax revenue or which advises or  
18 makes recommendations to any entity which expends or disburses  
19 or is supported in whole or in part by tax revenue, including, but  
20 not limited to, any board, commission, committee, subcommittee  
21 or other subsidiary thereof and includes an educational foundation  
22 as defined in subsection 3 of NRS 388.750 and a university  
23 foundation as defined in subsection 3 of NRS 396.405. "Public  
24 body" does not include the Legislature of the State of Nevada.

25 In Section 3.01 of the Nevada Open Meeting Law Manual, it states:

26 The combined definitions of "meeting," "action," and "quorum" in  
27 NRS 241.015(1), (2), and (4) indicate the type of body covered by  
28 the Open Meeting Law is a *collegial* body. Those definitions  
repeatedly use the plural word "members" and also the words  
"quorum" and "simple majority," which indicate the body must be  
comprised of more than one person and those persons share  
voting powers.

25 NEVADA OPEN MEETING LAW MANUAL, §3.01, at 14 (9<sup>th</sup> ed. 2001); see A. Schwing, OPEN  
26 MEETING LAWS 2d, § 6.32, at 287 (2000). In Op. Nev. Att'y Gen. No. 2005-05  
27 (March 31, 2005), this office opined that the Open Meeting Law "concerns itself with  
28 meetings, gatherings, decisions, recommendations, and other actions 'obtained through a

1 collective consensus of the members.” Further, in OMLO 2004-02 (January 20, 2004), this  
2 office opined:

3 [S]taff meetings within an agency or *interagency* meetings of  
4 groups which have no independent legal authority, no independent  
5 budget, and no formal mission or purpose will not fall within the  
6 definition of a public body if these groups, as a group, do not  
advise or make recommendations to a public body. [Emphasis  
added.]

7 Here, the “Water Team” does not take action or make recommendations to a public  
8 body through a collective consensus of its members. The “Water Team” does not vote on  
9 any issue. In fact, the “Water Team” meetings are interdepartmental meetings to discuss how  
10 each department within the City of Fernley should manage water service and supply. The  
11 “Water Team” has no independent legal authority, no independent budget, and no formal  
12 mission or purpose. The only purpose of these meetings is to ensure a consistent policy  
13 throughout Fernley’s departments regarding water supply and resources. Therefore, the  
14 “Water Team” is not considered a public body under the Nevada Open Meeting Law.

15 **V.**

16 **CONCLUSION**

17 The City of Fernley “Water Team” did not violate the Open Meeting Law because it is  
18 not a public body under NRS 241.015. Therefore, the “Water Team” was under no legal  
19 obligation to comply with the Open Meeting Law. At this time, this office is closing its file on  
20 this issue.

21 DATED this \_\_\_\_\_ day of November, 2005.

22 GEORGE J. CHANOS  
23 Attorney General

24 By:

25 \_\_\_\_\_  
26 NEIL A. ROMBARDO  
27 Senior Deputy Attorney General  
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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of November, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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PO BOX 392  
CARSON CITY NV 89702

PAUL G TAGGART ESQ  
KING & TAGGART LTD  
108 NORTH MINNESOTA STREET  
CARSON CITY NV 89703

\_\_\_\_\_  
An Employee of the Office of the Nevada Attorney General



1 And before we go to this item as the Chairman of this commission  
2 I am just going to share with those in the audience that I am going  
3 to insist from today forward on decorum in this meeting room. And  
4 the open meeting law does not require a public body to tolerate  
5 comments that are willfully disruptive of the meeting by being  
6 irrelevant, repetitious, slanderous, offensive, inflammatory,  
7 irrational or amounting to personal attacks. Section 8.05 of the  
8 Nevada Open Meeting Law Manual states that the chair of a public  
9 body may, without the vote of the public body declare a recess to  
10 remove a person who is disrupting the meeting.<sup>2</sup>

11 This warning was not placed on the agenda. After her warning, Mr. Felton addressed the  
12 Board during the public comment period and stated:

13 Guy Felton, publisher of Profanepeople.info. Public officials  
14 whose actions are *ominous, sinister and tyrannical invite and*  
15 *deserve uninhabited, vehement and caustic contempt.* I request  
16 that my remarks be agendized [sic] for in-depth give and take  
17 discussion but then you people are deathly afraid of give and take  
18 discussion. You prefer cheap shots in response to criticisms with  
19 no rebuttal permitted. There are no insults to severe for *corrupt*  
20 *public officials* who lie as Bonnie Weber did during the meeting of  
21 July 12. (Emphasis added.)

22 Chairwoman Weber interrupted Mr. Felton and warned him to refrain from insulting  
23 comments. Mr. Felton then stated, "Ms. Weber, did you lie on July 12?" Chairwoman Weber  
24 again warned Mr. Felton to proceed with decorum or he would be removed from the meeting.

25 Mr. Felton again proceeded with his comments and stated:

26 There are no insults too severe for *corrupt public officials* who  
27 hide the people's business from the people by arrogantly refusing  
28 to answer questions about the people's business and by use of the  
hide-and-seek consent agenda. There are no insults too severe for  
corrupt public officials who defecate on the principle of openness  
by not televising all meetings with equal camera treatment given to  
all speakers and by playing games with the start times of meetings  
in order to intentionally confuse the public. There are no insults too  
severe for *corrupt public officials* who misrepresent key laws as  
District Attorney Gammick did in his statement read here on  
September 13. (Emphasis added.)

It must also be noted that Mr. Felton's tone and manners were caustic. After this comment by  
Mr. Felton, Chairwoman Weber called a recess of the meeting and had Mr. Felton removed  
from the meeting.

///

<sup>2</sup> This office transcribed the relevant portions of the audiotape provided by the Board. All quoted portions of the public comment period come from that transcript.

1 III.

2 ISSUE

3 Did the Board violate the Open Meeting Law by removing Mr. Felton from the meeting  
4 and not placing the warning that persons could be removed for cause on the agenda?

5 IV.

6 CONCLUSIONS OF LAW

7 NRS 241.020(2) states:

8 2. Except in an emergency, written notice of all meetings must be  
9 given at least 3 working days before the meeting. The notice must  
include:

10 (c) An agenda consisting of:

11 (3) A period devoted to comments by the general public, if any,  
12 and discussion of those comments. No action may be taken upon  
13 a matter raised under this item of the agenda until the matter itself  
has been specifically included on an agenda as an item upon  
which action may be taken pursuant to subparagraph (2).

14 Section 8.04 of the NEVADA OPEN MEETING LAW MANUAL states that a public body may place  
15 “[r]easonable rules and regulations” on public comment, but “any rule or regulation that limits  
16 or restricts public comment must be clearly articulated on the agenda.” NEVADA OPEN  
17 MEETING LAW MANUAL, §8.04, at 50 (9<sup>th</sup> ed. 2001) *referring* to OMLO 99-08 (July 8, 1999).  
18 Section 8.04 of the manual also states that as long as a “public body’s restrictions” are  
19 viewpoint-neutral, a “public body may prohibit comment if the content of the comments is a  
20 topic that is not relevant to, or within the authority of, the public body,” or if the comments  
21 willfully disrupt a meeting by being “irrelevant, repetitious, slanderous, offensive,  
22 inflammatory, irrational or amounting to personal attacks.” *Id.* Section 8.05 of the manual also  
23 permits a chairperson of a public body to recess a meeting, “without vote of the body,” to  
24 exclude a disruptive person from a meeting. *Id.* § 8.05 at 51.

25 Here, the Complainant alleges that he was improperly removed from the meeting  
26 resulting in a violation of his First Amendment rights, and that the Board violated the Open  
27 Meeting Law by not placing Chairwoman Weber’s warning on its agenda. It is the position of  
28 this office that a public body should be able to face criticism by members of the general public

1 during the public comment period of an open meeting. However, at the same time, the public  
2 body does not have to face comments amounting to slanderous, offensive, inflammatory,  
3 irrational, or personal attacks. It does not appear from the videotape that Chairwoman Weber  
4 excluded Mr. Felton from the meeting because of his criticism of her, the Board, or District  
5 Attorney Gammick in regard to the performance of his duties. The videotape indicates that  
6 she stopped Mr. Felton because of what amounted to personal attacks in his comments.  
7 Therefore, the Chairperson's decision to exclude Mr. Felton from the meeting was viewpoint-  
8 neutral and reasonable. As a result, this office believes that Chairwoman Weber acted in  
9 compliance with the Open Meeting Law.

10 It must be noted, however, that the removal of any member of the general public from  
11 a meeting is an extreme remedy. Because such an act by a public body may result in a  
12 chilling effect on public comment and a potential violation of the Open Meeting Law, this office  
13 advises the Board to use this remedy as a last resort to prevent the inappropriate disruption of  
14 public meetings.

15 With regard to Complainant's allegation that the Board violated the Open Meeting Law  
16 by failing to place Chairwoman Weber's warning on the agenda, this office accepts the  
17 interpretation of the Washoe County District Attorney's Office. In response to Mr. Felton's  
18 complaint, the Washoe County District Attorney's Office stated, "The requirement that  
19 attendees at public meetings observe appropriate decorum and common courtesy is not a  
20 rule or regulation that restricts public comment or limits First Amendment expression, but  
21 rather is a basic obligation of doing business in any forum." As a result, this office finds that  
22 such a warning does not need to be placed on an agenda and that the Board did not violate  
23 the Open Meeting Law in this regard.

24 **V.**

25 **CONCLUSION**

26 With reference to the Washoe County Board of Commissioners requesting that Mr.  
27 Felton leave the meeting, the evidence supports that the Board acted reasonably. With  
28 regard to the Board failing to place Chairwoman Weber's warning on the agenda, this office

1 does not believe that act falls under a rule or regulation on public comment that needs to be  
2 stated on the agenda. Instead, it is simply a common courtesy that should be followed during  
3 a public forum by all those who attend. As a result, the Board complied with the Open  
4 Meeting Law during its September 26, 2005 meeting.

5 DATED this \_\_\_\_\_ day of November, 2005.

6 GEORGE J. CHANOS  
7 Attorney General

8  
9 By: \_\_\_\_\_  
10 NEIL A. ROMBARDO  
11 Senior Deputy Attorney General  
12 Nevada State Bar No. 6800  
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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of November, 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

GUY P FELTON III  
1220 SALEM PLACE #5  
RENO NV 89509

BONNIE WEBER CHAIRMAN  
WASHOE COUNTY BOARD OF COMMISSIONERS  
PO BOX 11130  
RENO NV 89520

PAUL A LIPPARELLI  
CHIEF CIVIL DEPUTY DISTRICT ATTORNEY  
WASHOE COUNTY DISTRICT ATTORNEY  
75 COURT STREET  
PO BOX 30083  
RENO NV 89520-3083

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An Employee of the Office of the Attorney General





1 senior center. As a result, she provided the Complainant with a choice between resigning  
2 and being terminated. The Complainant chose to resign.

3 On April 11, 2005, the Board conducted a properly noticed meeting. The item noticed  
4 for 3:20 p.m. stated, “[q]uarterly Report, Adell Panning, Fannie Komp Senior Center (Action).”  
5 During Ms. Panning’s report she mentioned the forced resignation of the “casual employee” at  
6 the senior center. She did not, however, mention the name of the “casual employee.” The  
7 Board never considered the forced resignation of the employee as an issue, and the Board  
8 did not make any comment or determination regarding whether Ms. Panning properly forced  
9 the resignation of the employee. The Board, however, never personally noticed the  
10 Complainant pursuant to NRS 241.033, that her forced resignation would be discussed at the  
11 April 11, 2005 meeting.

12 **III.**

13 **ISSUE**

14 Did the Board violate the Open Meeting Law by failing to provide the Complainant with  
15 personal notice pursuant to NRS 241.033?

16 **IV.**

17 **CONCLUSIONS OF LAW**

18 NRS 241.033(1) states:

19 1. A public body shall not *hold a meeting to consider* the  
20 character, alleged misconduct, professional competence, or  
21 physical or mental health of any person unless it has given written  
22 notice to that person of the time and place of the meeting. Except  
23 as otherwise provided in subsection 2, the written notice must be:

24 (a) Delivered personally to that person at least 5 working days  
25 before the meeting; or

(b) Sent by certified mail to the last known address of that person  
at least 21 working days before the meeting.

A public body must receive proof of service of the notice required  
by this subsection before such a meeting may be held. [Emphasis  
added.]

26 This Office previously opined that it will consider the actual discussion at a meeting to  
27 determine whether notice is required pursuant to NRS 241.033. See OMLO 2002-24  
28 (May 28, 2003). In doing so, this Office will look to see if the public body considered,

1 deliberated over, or thought seriously about the person's character, alleged misconduct,  
2 professional competence, or physical or mental health. See generally OMLO 2002-34  
3 (August 2, 2002).

4 Here the Board received a report from the director of one of its facilities. The director,  
5 who held the authority to terminate the position, mentioned that she forced the resignation of  
6 a "casual employee" pursuant to her authority. The Board did not notice a separate agenda  
7 item to consider this issue nor did it hold this "meeting to consider the character, alleged  
8 misconduct, professional competence, or physical or mental health" of the Complainant.  
9 NRS 241.033(1). In fact, the Board did not comment on the forced resignation at all. As a  
10 result, the Open Meeting Law did not obligate the Board to notice the Complainant of this  
11 discussion.

12 **V.**

13 **CONCLUSION**

14 The Open Meeting Law did not require the Eureka County Senior Centers Advisory  
15 Board to personally notice the Complainant of its discussion at its April 11, 2005 meeting  
16 because the Board did not consider the Complainant's forced resignation. Any discussion of  
17 the Complainant's forced resignation was informational only. As a result, the Board complied  
18 with the Open Meeting Law, and at this time, this Office is closing its file on this issue without  
19 further action.

20 DATED this \_\_\_\_\_ day of August 2005.

21 BRIAN SANDOVAL  
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23  
24 By:

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**CERTIFICATE OF MAILING**

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this \_\_\_\_\_ day of August 2005, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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