

1 **OFFICE OF THE ATTORNEY GENERAL**

2 **STATE OF NEVADA**

3
4 In the matter of:

5 **McDERMITT FIRE DISTRICT BOARD**

OAG FILE NO.: 13897-273

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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9 **BACKGROUND**

10 Dale E. Hartley filed two complaints ("Complaints"), dated March 26, 2018 and April
11 12, 2018 respectively, with the Office of the Attorney General ("OAG"), alleging violations
12 of the Nevada Open Meeting Law ("OML") by the McDermitt Fire District Board ("Board").

13 The Complaints identify the following alleged OML violations:

14 1. The Board violated the OML by submitting a yearly budget for 2018–2019 to
15 the Humboldt County Comptroller's Office without holding a properly noticed open
16 meeting; and,

17 2. Mr. Hartley requested, but did not receive, Board minutes from the
18 January 19, 2018 Board meeting, and the agendas for all 2018 Board meetings.

19 The OAG has statutory enforcement powers under the OML and the authority to
20 investigate and prosecute violations of the OML. Nevada Revised Statutes ("NRS")
21 241.037; NRS 241.039; NRS 241.040. The OAG's investigation of the Complaints included
22 a review of the following: the Complaints; the Board's Response prepared by the Office of
23 the Humboldt County District Attorney; the agenda of the Board's May 17, 2018 meeting;
24 and follow-up correspondence with the Office of the Humboldt County District Attorney.

25 After investigating the allegations in the Complaints, the OAG determines that the
26 Board violated the OML by taking action to approve the McDermitt Fire District budget
27 without properly agendizing the action item or taking the action in an open public meeting.

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FINDINGS OF FACT

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2 1. The Board is a "public body" as defined in NRS 241.015(4) and is subject to
3 the OML.

4 2. On or about March 15, 2018, the Humboldt County Comptroller sent a letter
5 to the McDermitt Fire District requesting its expenditures. The Comptroller then
6 requested that the McDermitt Fire District verify revenue and approve a budget by
7 April 16, 2018, to be considered at the May 21, 2018, Humboldt County Commissioners
8 meeting.

9 3. The Board provided approval for the budget and on or about April 12, 2018,
10 Board Secretary, Bill Donaldson, sent the budget to the Comptroller.

11 4. The budget approval was not agendized as an action item and approval of the
12 budget was not made in a properly noticed meeting.

13 5. Mr. Hartley became aware the McDermitt Fire District budget was submitted
14 to the Comptroller, and on March 26, 2018, requested the meeting minutes from the
15 January 19, 2018, Board meeting, as well as the agendas of all 2018 open meetings of
16 the Board.

17 6. As of the date Mr. Hartley filed his Complaints, he had not received copies of
18 the January 19, 2018, meeting minutes or agendas from all 2018 meetings. He has
19 subsequently received those documents.

20 7. After being made aware of the OML Complaints filed by Mr. Hartley with the
21 OAG, the Office of the Humboldt County District Attorney provided OML guidance to
22 the Board.

23 8. The Board held an open meeting on May 17, 2018. That meeting included
24 several agenda items focused on compliance with the OML. Agenda item nine was a review
25 of the OML agenda checklist, and agenda item ten was a review of the OML regarding
26 informal gatherings and discussions that constitute deliberation.

27 9. Under agenda item eleven, the Board took corrective action, voiding the
28 budget submitted to the Humboldt County Comptroller in March or April 2018.

1 10. Then, under agenda item twelve, the Board discussed and approved a final
2 2018–2019 budget to be submitted to the Humboldt County Commission on May 21, 2018.

3 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

4 **A. The McDermitt Fire District Board Took Action in Violation of the**
5 **OML.**

6 The OML requires that any action taken by public bodies be made openly, and that
7 except as otherwise provided by specific statute, all meetings of public bodies must be open
8 and public. NRS 241.010(1); 241.020(1). Under the OML, “Meeting” means:

- 9 (1) The gathering of members of a public body at which a quorum
10 is present, whether in person or by means of electronic
11 communication, to deliberate toward a decision or to take
12 action on any matter over which the public body has
13 supervision, control, jurisdiction or advisory power.
- 14 (2) Any series of gatherings of members of a public body at which:
15 (I) Less than a quorum is present, whether in person or
16 by means of electronic communication, at any
17 individual gathering;
18 (II) The members of the public body attending one or
19 more of the gatherings collectively constitute a
20 quorum; and
21 (III) The series of gatherings was held with the specific
22 intent to avoid the provisions of this chapter.

23 NRS 241.015(3)(a). “Action” means:

- 24 (a) A decision made by a majority of the members present,
25 whether in person or by means of electronic communication,
26 during a meeting of a public body;
27 (b) A commitment or promise made by a majority of the
28 members present, whether in person or by means of
 electronic communication, during a meeting of a public body;
 (c) If a public body may have a member who is not an elected
 official, an affirmative vote taken by a majority of the
 members present, whether in person or by means of
 electronic communication, during a meeting of the public
 body; or
 (d) If all the members of a public body must be elected officials,
 an affirmative vote taken by a majority of all the members of
 the public body.

29 NRS 241.015(1).

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1 The action of any public body taken in violation of the OML is void. NRS 241.036.
2 When a violation of the OML occurs or is alleged, the OAG recommends that the public
3 body correct the apparent violation. See NEVADA OPEN MEETING LAW MANUAL, § 10.01
4 (12th ed. 2016). Where a public body takes action on an item that has not been properly
5 agendized or included in a public meeting, the public body should vote to rescind the prior,
6 illegal action during a public meeting. *Id.* at § 10.02(e).

7 Here, the Board violated the OML when it took action to approve the McDermitt
8 Fire District budget and submitted the budget to the Humboldt County Comptroller
9 without properly agendizing the action item or taking the action in an open public meeting.
10 The OAG recognizes the corrective measures taken by the Board, namely rescinding the
11 action in its May 17, 2018 meeting. However, these corrective measures do not negate the
12 OML violation.

13 **B. The Board Committed an OML Violation By Failing to Provide Mr.**
14 **Hartley With the Agenda and Minutes of Its January 19, 2018,**
Meeting.

15 The OML provides that upon request, a public body shall provide with no charge at
16 least one copy of an agenda for a public meeting, and supporting materials provided to the
17 members of the public body for an item on the agenda. NRS.241.020(6). The OML also
18 provides that a public body shall have at least one copy of the agenda and supporting
19 materials "available to the public at the meeting to which the documents pertain."
20 NRS 241.020(6). A public body must also make minutes or an audio recording of a meeting
21 available for inspection by the public within 30 working days after adjournment of the
22 meeting. NRS 241.035.

23 Mr. Hartley's Complaint states that on March 26, 2018, he requested the meeting
24 minutes from the January 19, 2018, Board meeting, as well as the agendas of all 2018 open
25 meetings of the Board, and that he had not received the requested documents by the filing
26 of his April 12, 2018 Complaint.

27 The OAG investigation determined that the agenda and minutes for the Board's
28 January 19, 2018, meeting were not provided as required. Thus, the OAG finds a violation

1 of the OML. The OAG recognizes the corrective measures taken by the Board, namely
2 sending the requested copies of the minutes. However, these corrective measures do not
3 negate the OML violation.

4 **SUMMARY AND INCLUSION OF AGENDA ITEM**

5 If the Attorney General investigates a potential OML violation and makes findings
6 of fact and conclusions of law that a public body has taken action in violation of the OML,
7 "the public body must include an item on the next agenda posted for a meeting of the public
8 body which acknowledges the findings of fact and conclusions of law." NRS 241.0395.
9 The public body must treat the opinion of the Attorney General as supporting material for
10 the agenda item in question for the purpose of NRS 241.020. *Id.*

11 Here, upon investigating the present Complaint, the OAG makes findings of fact and
12 conclusions of law that the McDermitt Fire District Board violated the OML by taking
13 action to approve the McDermitt Fire District budget without properly agendizing the
14 action item or taking the action in an open public meeting and by failing to provide public
15 access to an agenda and minutes. Therefore, the Board must place an item on the agenda
16 of its next meeting in which the Board acknowledges the present Findings of Fact and
17 Conclusions of Law ("Opinion") which results from the OAG investigation in the matter of
18 Attorney General File No. 13897-273. The Board must also include the OAG Opinion in the
19 supporting materials for its next meeting.

20 DATED: October 2, 2019

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22 AARON D. FORD
Attorney General

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24 By: 
ROSALIE BORDELOVE
25 Chief Deputy Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of October, 2019, I served the FINDINGS OF FACT AND CONCLUSIONS OF LAW by depositing a copy of the same in the United States mail, properly addressed, postage prepaid, Certified Mail, addressed as follows:


Dale Hartley



Certified Mail No. 7014 2870 0001 8497 5619

Wendy Maddox, Esq.
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An Employee of the
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