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OFFICE OF THE ATTORNEY GENERAL

5420 Kietzke Lane, Suite 202
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October 11, 2019

Mr. Duane L. Thurston

**Re: County Board of Commissioners - Open Meeting Law
Complaint, OAG File No. 13897-302**

Dear Mr. Thurston:

The Office of the Attorney General (OAG) is in receipt of your complaints alleging violations of the Open Meeting Law (OML) by the Clark County Board of Commissioners (Board) regarding whether the Board discussed your character or misconduct during a closed session without proper notice to you.

The OAG has statutory enforcement powers under the OML, and the authority to investigate and prosecute violations of the OML. Nevada Revised Statutes (NRS) 241.037; NRS 241.039; NRS 241.040. In response to your complaints, the OAG reviewed your complaints; the Board's responses and requested supplement thereto; and, the relevant video recordings, agendas, and material for the Board's meetings of April 17, 2018, and July 3, 2018.

FACTUAL BACKGROUND

The Board is a "public body" as defined in NRS 241.015(4) and subject to the OML. You are the elected constable for the Mesquite Township. Your first complaint alleges Marilyn Kirkpatrick, a Commissioner on the Board, committed an OML violation by making statements concerning the Mesquite Constable's Office during an item noticed to discuss the constable offices in Henderson and North Las Vegas. Specifically, the item noticed for discussion and possible action was: "[d]iscuss whether to continue or abolish the elected office of the Constable in the Henderson and North Las Vegas Townships; and, direct staff accordingly. (For possible action)." During this agenda item, Commissioner Kirkpatrick discussed her desire to eliminate the Mesquite Constable's Office. Commissioner Kirkpatrick requested the rest of the Board support her position. None of the other Commissioners discussed Commissioner Kirkpatrick's comments. Staff of the Commission was directed to discuss the issue with Commissioner Kirkpatrick and

whether Commissioner Kirkpatrick would like an item covering the Mesquite Constable's Office placed on a future agenda.

Your second complaint alleges that the Board went into closed session on July 3, 2018, to consider your character or alleged misconduct without proper notice and that the Board was prohibited from considering your character or alleged misconduct in a closed session as you are an elected official. You indicate the basis of your belief that the Board improperly considered your character or misconduct in a closed session is that a reporter approached you after the closed session and told you Commissioner Kirkpatrick had told the reporter you were under police investigation.

Agenda item 51 for July 3, 2018, states:

Go into closed session, pursuant to NRS 241.015(3)(b)(2), to receive information from the District Attorney regarding potential or existing litigation involving a matter over which the Board has supervision, control, jurisdiction or advisory power, and to deliberate toward a decision on the matter, and pursuant to NRS Chapter 288.220, to receive a report on the status of ongoing labor negotiations, and direct staff accordingly. (For possible action.)

The Board represented information was presented to the Board during the closed session related to existing and potential litigation regarding several constables, including you, as the Constable for the Mesquite Township. The Board declined to provide further information as to the nature of the discussion as it stated it does not want to waive the confidentiality of the attorney-client discussions.

DISCUSSION AND LEGAL ANALYSIS

Chapter 241 of NRS requires the actions of public bodies "be taken openly and that their deliberations be conducted openly." NRS 241.010(1); *see McKay v. Bd. of Supervisors*, 102 Nev. 644, 651 (1986). Public bodies working on behalf of Nevada citizens must conform to statutory requirements in open meetings under an agenda that provides full notice and disclosure of discussion topics and any possible action. *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003). A "meeting" is a "gathering of members of a public body at which a quorum is present, whether in person or by means of electronic communication, to deliberate toward a decision or to take action." NRS 241.010(3)(a)(1). "Deliberate" means "the *collective* discussion or exchange of facts preliminary to the ultimate decision." NRS 241.015(2) (emphasis added). "Action" is a decision or commitment by a public body. *See* NRS 241.015(1). "[A] public body shall not hold a closed meeting to consider the character, alleged misconduct or professional competence of: (a) An

elected member of a public body; or (b) an administrative officer of a public body who is appointed by, and serves at the pleasure of, the public body.” NRS 241.031. A public body is not permitted to hold a meeting to consider the character or alleged misconduct of a person without proper notice. NRS 241.033. A gathering “[t]o receive information from the attorney employed or retained by the public body regarding potential or existing litigation” is not a meeting and is not subject to the requirements of the OML. NRS 241.015(3)(b)(2); *see* OMLO 2002-21 (May 20, 2002).

At its April 17, 2018, meeting, the Board did not deliberate or take action with regard to the Mesquite Constable’s Office. Commissioner Kirkpatrick was the only Commissioner to discuss the Mesquite Constable’s Office.¹ No action was taken and there was no collective discussion with regard to the Mesquite Constable’s Office. The evidence indicates the Board did not discuss or deliberate with regard to the Mesquite Constable’s Office. The OAG does not find a violation of the OML with regard to your complaint concerning the Board’s meeting of April 17, 2018.

However, the OAG does caution that members of public bodies should refrain from straying off the topics noticed in their agendas. It is very easy for multiple members of a public body to participate in a discussion not noticed in an agenda and cause a violation of the OML.

The evidence available to the OAG indicates the Board was not required to provide you individual notice of its discussion on July 3, 2018. The agenda item set out that the District Attorney would provide information regarding potential or existing information to the Board. The Board represented information was presented to the Board during the closed session related to existing and potential litigation regarding several constables, including you, as the Constable for the Mesquite Township. No reliable evidence shows the Board exceeded the exception to the definition of “meeting” contained in NRS 241.015(3)(b)(2). As the OML applies only to “meetings”, the OAG does not find a violation of the OML with regard to your complaint concerning the Board’s meeting of July 3, 2018.

¹ Other members confined their comments to the possible inclusion of an item related to Mesquite Constable’s Office on a future agenda.

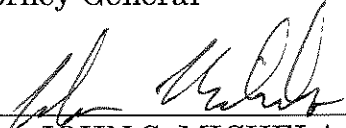
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CONCLUSION

The OAG has reviewed the available evidence and determined that no violation of the OML has occurred on which formal findings should be made. The OAG will close the file regarding this matter.

Respectfully,

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