

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3
4 In the matter of:

OAG FILE NO.: 13897-315

5 SKYLAND GENERAL IMPROVEMENT
6 DISTRICT,

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

7
8 **BACKGROUND**

9 Dennis L. Berry filed a complaint (Complaint) with the Office of the Attorney
10 General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Skyland
11 General Improvement District (District) concerning meetings held from May 20, 2016 to
12 December 12, 2018. The Complaint alleges that the Board violated the OML as follows:

13 **ALLEGATIONS:** The District created a subcommittee (named the "fence
14 committee") to be a fact-finding subcommittee but the subcommittee violated the OML by
15 deliberating and making recommendations to District.

16 The OAG has statutory enforcement powers under the OML and the authority to
17 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS
18 241.040. The OAG's investigation of the Complaints included a review of the following: the
19 Complaint and supplemental attachments; the public notice agendas and minutes for the
20 District meeting from May 20, 2016 to October 24, 2018 (as available); and written
21 responses to the Complaint and supporting materials from the Board.

22 After investigating the Complaint, the OAG determines that the District violated
23 the OML by allowing its fence committee to deliberate and make recommendations while
24 failing to comply with the OML.

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FINDINGS OF FACT

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

4 2. The District created a subcommittee named the fence committee to be a fact-
5 finding committee exempting it from complying with the OML.

6 3. The fence committee was not a fact-finding committee as it routinely
7 deliberated between options, suppressed options it opposed, and recommended options it
8 preferred.

9 4. Surveys sent to Skyland residents shows that the fence committee only
10 recommended a few of the fence options to the District while other options were omitted

11 5. On August 5, 2018, seven fence options were provided to the fence committee
12 with no evidence that these were conveyed to the District.

13 6. On August 6, 2018, eleven fence options were provided to the fence committee
14 with no evidence that these were conveyed to the District.

15 7. On August 6, 2018, an email from David Nyre confirmed that deliberation was
16 occurring regarding the fence options as not all options were being provided to the District.

17 8. Many emails from Dennis Berry stated that all fence options were not being
18 provided to the District.

19 9. On September 7, 2018, an email from Douglas Robertson was sent stating that
20 not all information was being provided to the District.

21 10. The fence committee deliberated and made recommendations regarding what
22 information and options to present to the District and participated in the decision-making
23 process and thus was subject to the OML.

24 11. The fence committee did not comply with many OML requirements, including
25 but not limited to: compliant agendas were not created to notify the public of what would
26 be discussed at the meetings, compliant notices of the meeting were not posted three
27 working days in advance showing when and where the meetings would occur, support
28 materials provided to the members of the subcommittee were not provided to the public at

1 the same time they were provided to the members, no public copy of the agenda and support
2 materials was available at the meetings, public comment was not taken at the meetings,
3 recordings of the meetings were not taken and minutes of the meetings were not taken.

4 LEGAL STANDARDS AND CONCLUSIONS OF LAW

5 1. **The District violated the OML when its fence committee deliberated
6 and made recommendations to the District.**

7 The Open Meeting Law concerns itself with meetings, gatherings, decisions, and
8 actions obtained through the collective consensus of a quorum of the public body
9 membership.¹ NRS 241.015(4) specifically includes committees, subcommittees, or
10 subsidiaries thereof within the definition of a "public body." A committee or subcommittee
11 is covered by the law whenever a quorum of the committee or subcommittee gathers to
12 deliberate or make a decision including taking action to make a recommendation to the
13 parent body.² The Legislature intended that "committee, subcommittee, or any subsidiary
14 thereof" be applied to any gathering that makes a decision or recommendation to a parent
15 body. The label given to the sub-group is immaterial and will not prevent the application
16 of the OML to groups with other labels besides "committee" or "sub-committee." Even in
17 the absence of a formal appointment process (see NRS 241.015(4)(a)(7)), the Open Meeting
18 Law applies to a committee with de facto authority from the parent public body to act on
19 its behalf.³ If a subcommittee recommendation to a parent body is more than mere fact-
20 finding because the subcommittee has to choose or accept options, or decide to accept
21 certain facts while rejecting others, or if it has to make any type of choice in order to create
22 a recommendation, then it has participated in the decision-making process and is subject
23 to the OML.⁴

24 Here, based on the emails from David Nyre, Dennis Berry, Douglas Robertson as
25 well as the surveys sent to the Skyland residents, it is clear that the fence committee was

26 ¹ See *Dewey v. Redevelopment Agency*, 119 Nev. 87, 64 P.3d 1070 (2003) (collective process of decision-
making must be accomplished in public).

27 ² See NRS 241.015; *Lewiston Daily Sun, Inc. v. City of Auburn*, 544 A.2d 335 (Me. 1988); *Arkansas Gazette
Co. v. Pickens*, 522 S.W.2d 350 (Ar. 1975).

28 ³ See p. 19-20, Nevada Open Meeting Law Manual (12th ed. 2016).

⁴ See p. 18, Nevada Open Meeting Law Manual (12th ed. 2016).

1 deciding which fence options were recommended to the District and the Skyland residents.
2 The fence committee's decisions to share certain fence options and not others show that the
3 fence committee participated in the decision-making process and thus the fence committee
4 was required to comply with the OML. Some of these requirements, which were not
5 followed, include: the creation of compliant agendas to notify the public of what would be
6 discussed at the meetings, the posting of compliant notices of the meeting three working
7 days in advance showing when and where the meetings would occur, providing the public
8 and the members of the subcommittee support materials at the same time, creation of a
9 public copy of the agenda and support materials which was available at the meetings,
10 allowing public comment at the meetings, recording the meetings and taking minutes of
11 the meetings.

12 As a result of the fence committees deliberating and making recommendations, it
13 was required to comply with the OML, but it did not. Therefore, as the fence committee
14 was a subcommittee of the District and the District did not require its subcommittee to
15 follow the OML, the OAG finds that the District violated the OML.

16 SUMMARY AND INCLUSION OF AGENDA ITEM

17 If the Attorney General investigates a potential OML violation and makes findings
18 of fact and conclusions of law that a public body has taken action in violation of the OML,
19 "the public body must include an item on the next agenda posted for a meeting of the public
20 body which acknowledges the findings of fact and conclusions of law." NRS 241.0395. The
21 public body must treat the opinion of the Attorney General as supporting material for the
22 agenda item(s) in question for the purpose of NRS 241.020. *Id.*

23 Upon investigating the present Complaint, the OAG makes findings of fact and
24 conclusions of law that the fence committee did not comply with the OML by deliberating
25 and making recommendations to the District. As the fence committee was a subcommittee
26 to the District and the District did not require it to comply with the OML, the District is in
27 violation of the OML. Accordingly, the District and the fence committee must place an item
28 on the next meeting agenda in which the body acknowledges the present Findings of Fact

1 and Conclusions of Law (Opinion) resulting from the OAG investigation in the matter of
2 Attorney General File No. 13897-315. Both bodies must also include the OAG Opinion in
3 the supporting materials for its next meeting.

4 The OAG further notes that the violation of the OML may be ongoing⁵ thus a suit
5 to have actions taken in violation of the OML declared void remains a possibility if the
6 District fails to bring its and its fence committee's activities into compliance with the OML
7 and provide notice to the OAG of such compliance. This file will remain open for at least
8 one month, so that the District and fence committee's reaction to this decision can be
9 evaluated to determine if other action is necessary.

10 DATED: October 2, 2019.

11 AARON D. FORD
12 Attorney General

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14 By: 
15 DAVID M. GARDNER
16 Senior Deputy Attorney General

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28 ⁵ Based on the OAG's investigation, the OAG believes that the fence committee has continued to meet since the filing of
this Complaint but has not complied with the OML.

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:


Skyland General Improvement District
President/Chair Catherine Gibb
P.O. Box 11357
Zephyr Cove, NV 89448

Certified Mail No. 7009 3410 0002 3251 6654

Dennis L. Berry



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An Employee of the
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