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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

July 29, 2020

Via U.S. Mail

Sheryl L. Samson
[REDACTED]
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-336,
Mineral County Board of Commissioners**

Dear Ms. Samson:

The Office of the Attorney General (OAG) is in receipt of your complaint alleging violations of the Open Meeting Law (OML) by the Mineral County Board of Commissioners (Board) regarding whether the Board exceeded the scope of its agenda; whether there were serial communications between two Board members; and whether a motion made with regard to an agenda item fit within the agenda item as written.

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 complaint and attachments; the Board's response thereto; and the agenda and minutes for the Board's meeting of March 6, 2019.

FACTUAL BACKGROUND

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

On March 6, 2019, the Board held a meeting. At one point during the meeting, the Board recessed and a meeting of Mineral County Board of Health (MCBH) was held. The meeting of MCBH was separately noticed with its own agenda. According to your complaint, the Board recess to accommodate the MCBH meeting lasted approximately three minutes. After the MCBH meeting, the Board resumed its agenda by calling the next item.

One of the items heard during the meeting on March 6, 2019, was noticed and agendaized as follows: "14. **Honorable Garth Price, Commissioner** – For

consideration and possible action relative to requesting permission from the Governor's Office on Economic Development to participate in the Sierra Region Development Authority. (Public comment following.)”

The action taken on this item is reflected in the minutes as follows: “to move forward with a letter signed by the chairman to the Governor (sic) Office to pull the money from Mineral County Economic Development Authority and put it toward Northern Nevada Development Authority.”

Your transcription of the proceedings reflected that Commissioner Chris Hegg and Commissioner Garth Price held discussions with Matt Moore and Rob Hooper with the Governor's Office of Economic Development prior to the meeting of March 6, 2019.

The Board's response indicated that Commissioner Hegg and Commissioner Price met individually with Mr. Moore and had individual telephone calls with Mr. Hooper. Both Commissioners submitted signed statements confirming this. Commissioner Hegg's signed statement also indicated he spoke again with Mr. Moore prior to the Board's meetings of February 20, 2019, and March 6, 2019. Both signed statements affirmatively indicated the commissioners did not discuss with Mr. Moore and Mr. Hooper how they would vote or how they thought other commissioners would vote.

Your complaint makes, essentially, three allegations: 1) the MCBH discussion was not on the Board agenda; 2) Commissioner Hegg and Commissioner Price had serial meetings involving Mr. Hooper and Mr. Moore; and 3) the motion made on the agenda item set out above was not broad enough to cover the action taken on the item.

DISCUSSION AND LEGAL ANALYSIS

Allegation #1

You allege the MCBH discussion was not on the agenda. This is a correct statement. However, the MCBH discussion was separately noticed and agendized as its own meeting. The Board took a short recess to accommodate the MCBH meeting. The Board then reconvened by calling the next item. Thus, the OAG does not find a violation of the OML.

Allegation #2

You allege serial meetings occurred regarding the above-referenced agenda item prior to the Board's meeting of March 6, 2019. Chapter 241 of the NRS requires the actions of public bodies “be taken openly and that their deliberations be conducted openly.” NRS 241.010; see *McKay v. Bd. of Supervisors*, 102 Nev. 644, 651 (1986). 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 241.015(3)(a)(1). A “quorum” is a “majority of the membership of a public body” NRS 241.015(5). A quorum may be established through a series of gatherings involving members of the public body. NRS 241.015(3)(a)(2). In short, a public body may not deliberate or take action outside of a public meeting whether a quorum of the public body meets in person or the thoughts and opinions of members of a public body are shared amongst the members through serial meetings or communications where no individual meeting or communication involves a quorum of members.

Your complaint appears to allege Commissioner Hegg and Commissioner Price communicated serially through Mr. Hooper and/or Mr. Moore. Your complaint bases this on the discussion of conversations held with Mr. Hooper and Mr. Moore during the Board meeting of March 6, 2019. If Commissioner Hegg and Commissioner Price did engage in serial communication, it would have involved a quorum as the Board is comprised of three members. However, you do not provide any evidence Commissioner Hegg or Commissioner Price went beyond individually obtaining answers to their questions. That is, the OAG does not possess any evidence that Commissioner Hegg or Commissioner Price used Mr. Hooper or Mr. Moore to communicate their thoughts about any issue before the Board to each other, let alone voting or motions, using Mr. Hooper or Mr. Moore. Thus, the OAG does not find a violation of the OML.

Allegation #3

You allege the motion made on the agenda item set out above was not broad enough to cover the action taken on the item, specifically moving money from one economic development authority to another economic development authority. An agenda must provide a “clear and complete statement of the topics scheduled to be considered during the meeting.” NRS 241.020(2)(d)(1). This requires that an agenda item be phrased in a manner which will allow the public to know what will actually be discussed during the item. Furthermore, “[A] higher degree of specificity is needed when the subject to be debated is of special or significant interest to the public.” *Sandoval v. Board of Regents*, 119 Nev. 148, 154-55, 67 P.3d 902, 906 (2003) (citations omitted).

In this case, the agenda item regarded Mineral County’s participation in a different economic development authority. The motion made was to have the Chairman of the Board (Commissioner Hegg) send a letter asking the Governor’s Office to pull money from the Mineral County Economic Development Authority and put it toward Norther Nevada Development Authority.

Funding and other monetary issues are generally of special or significant interest to the public. However, an economic development authority, by its very nature, involves money and funding issues. Participation in a new economic development authority does seem to implicate moving funding, or, at a minimum, finding new funds for the new economic development authority. In addition, it appears that it is the Governor's Office which controls how funds are allocated among economic development authorities. This means that if the motion had been exactly in line with the agenda item to send a letter to the Governor's Office asking for permission to participate in a new economic development authority that funds would have been re-allocated from the old economic development authority to the new one. That is, it appears likely that the result would have been exactly the same. Thus, the OAG does not find a violation of the OML.

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.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ John S. Michela
JOHN S. MICHELA
Senior Deputy Attorney General
Gaming Division

JSM:mmh

cc: Sean E. Rowe, District Attorney of Mineral County

Sheryl L. Samson
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CERTIFICATE OF SERVICE

I certify that on the 17th day of August, 2020, I mailed the foregoing letter by depositing a copy of the same in the U.S. mail, properly addressed, postage prepaid, first class mail, to the following:

Sheryl L. Samson

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████████████████████

Sean E. Rowe, District Attorney
Of Mineral County
P.O. Box 1210
Hawthorne, NV 89415

/s/ Debra Turman
An employee of the State of Nevada
Office of the Attorney General