

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:

4 CANYON GENERAL IMPROVEMENT
5 DISTRICT

OAG FILE NO.: 13897-385

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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7
8 **BACKGROUND**

9 Jennifer Agnew filed a complaint with the Office of the Attorney General (“OAG”) alleging violations of the Nevada Open Meeting Law (“OML”) by the Canyon General Improvement District (“CGID”), alleging that the CGID violated the OML as follows:

12 **ALLEGATION NO. 1:** The CGID failed to provide copies of supplemental meeting materials when requested by members of the public.

14 **ALLEGATION NO. 2:** The CGID paraphrased and purposefully left out parts of written remarks by members of the public during its September 15, 2020, meeting and failed to include the written remarks as part of the minutes and/or official record despite being requested.

18 **ALLEGATION NO. 3:** A quorum of the CGID gathered together without providing proper notice of a meeting on several occasions.

20 **ALLEGATION NO. 4:** The CGID failed to post its agendas and notices of meetings in three separate physical locations.

22 The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The OAG’s investigation of the Complaint included a review of the following:

- 25 1. The Complaint and its attachments,
- 26 2. The response filed on behalf of the CGID and its attachments, and
- 27 3. Prior OML decisions, case law, and portions of the Nevada Revised Statutes
- 28 relevant to the Complaint.

1 After investigating the Complaint, the OAG determines that the CGID violated the
2 OML by failing to include in the record of the meeting a copy of the prepared remarks
3 submitted by a public commenter after being requested to do so. The OAG does not find
4 violations of the OML with respect to the other allegations.

5 **FINDINGS OF FACT**

6 1. The CGID was established in 1993 by Storey County pursuant to the authority
7 enumerated in Chapter 318 of the Nevada Revised Statutes (“NRS”). It is a “public body”
8 as defined in NRS 241.015(4) and subject to the OML.

9 2. The 2020 CGID Board of Trustees was comprised of five members, namely
10 Chairman Larry Huddleston, Secretary Phillip Hilton, Treasurer Dave Hart, Member Don
11 Barnes, and Lockwood Community Corporation Member Don Harold.

12 3. Complainant alleges that three CGID Board members, namely Mr. Hilton,
13 Mr. Huddleston, and Mr. Hart, constituting a quorum of the CGID, met on July 28, August
14 25, August 27, September 22, and October 10, 2020, without providing notice of a public
15 meeting.¹

16 4. Complainant further alleges that on September 15, 2020, she personally went
17 to the CGID office to request a copy of an agreement related to an agenda item on the
18 CGID’s agenda for its September 15 meeting pertaining to patrol partnership with Rainbow
19 Bend HOA. Ms. Agnew asserts she was told by CGID Manager Mitch Andreini that there
20 was no written draft available and that he did not have a copy to distribute to CGID Board
21 members.

22 5. The CGID held a meeting on September 15, 2020.

23 6. The public notice agenda for the September 15 meeting provided the following:

24 NOTICE: This notice is posted per NRS 241 at the Largomarsino Fire Station,
25 Rainbow Bend Clubhouse, Lockwood Community Corp. Office, Lockwood

26
27 ¹ Complainant included additional gatherings in her Complaint, but those gatherings are alleged to have
28 occurred more than 120 days prior to the filing of the Complaint. The OAG will refrain from opining on
gatherings on these dates as the facts as alleged in the Complaint indicate the gatherings were discoverable
at the time they occurred. NRS 241.039(2).

1 Market and Hillside Elem. School. Copies are also available at the CGID office
2 at 800 Peri Ranch Rd.

3 7. Agenda Item No. 13 of the CGID's September 15 CGID meeting was noticed
4 as "Discussion/Action – Vote on Patrol partnership with Rainbow Bend HOA."

5 8. During discussion of Agenda Item No. 13 of the September 15 meeting, the
6 CGID voted to approve a patrol partnership with the Rainbow Bend Homeowners
7 Association ("RBHOA") for an amount not to exceed \$1,000.00 per month.

8 9. Agenda Item No. 14 of the CGID's September 15 meeting was noticed as
9 "Discussion/Action – Correspondence written to Board Members."

10 10. Complainant alleges that during the meeting when Agenda Item No. 14 was
11 called, Chairman Huddleston read aloud written remarks but that the remarks were
12 paraphrased and/or portions of the remarks were left out.

13 11. Complainant further alleges that Member Hilton discussed excluding the
14 written remarks as part of the record and that the CGID decided not to include them,
15 despite insistence from the member of the public who submitted the remarks to include the
16 same.

17 12. Agenda Item No. 16 of the CGID's September 15 meeting was noticed as
18 "Public Comments (These comments have a three-minute time limit per person.)"

19 13. After the meeting, Complainant sent an e-mail to the CGID requesting a copy
20 of the audio minutes from the September 15 meeting, as well as a copy of the RBHOA Patrol
21 agreement and legal agreement that the CGID obtained regarding the patrol agreement.

22 14. On September 17, 2020, the CGID responded to Complainant's request
23 indicating that it was working on getting the meeting audio and that Complainant would
24 receive a letter for her requests from the CGID Board.

25 15. On September 18, 2020, the CGID sent a letter to Complainant in response to
26 her request. The letter indicated that the patrol partnership between the RBHOA
27 referenced on Agenda Item No. 13 was approved by the CGID Board and that the
28 partnership would utilize the last Patrol contract that was in place between the parties

1 until July 31, 2019. Attached to the letter were a copy of the audio recording of the
2 September 15 meeting and the previous Patrol agreement.

3 16. Complainant further asserts that on several occasions, Mr. Huddleston, Mr.
4 Hilton, and Mr. Hart gathered together without proper notice of a meeting, including the
5 August 27, 2020 Open-Air Town Hall Meeting and a Campaign Event held on October 10,
6 2020.

7 17. Complainant also asserts that the CGID agendas have not been posted in
8 three separate locations.

9 **LEGAL STANDARDS AND CONCLUSIONS OF LAW**

- 10 **1. The CGID did not violate the OML where it failed to provide a**
11 **copy of the patrol agreement discussed at the September 15,**
12 **2020 meeting.**

13 Under the OML, a public body must provide, upon request, a copy of supporting
14 materials that are provided to members of the public body for an item on the agenda, save
15 for materials pertaining to a closed portion of the meeting or materials that are
16 confidential. NRS 241.020(7)(c). Such materials must be made available to the requester
17 at the time the material is provided to the members of the public body. NRS 241.020(8).

18 In this case, neither the CGID nor Complainant dispute that Complainant requested
19 a copy of the patrol agreement that she believed was to be discussed during the September
20 15 meeting. In fact, Complainant submitted a signed letter indicating that on September
21 15, 2020, she went to the CGID office, spoke with Mitch Andreini, and requested a copy of
22 the patrol partnership agreement with the RBHOA. According to Complainant, Mr.
23 Andreini informed her that he did not have any draft of the agreement and that no
24 agreement had been included in the Board packets. In its response to the Complaint, the
25 CGID confirms that it did not provide her a copy of the agreement because it did not exist
26 at the time of the meeting. The CGID asserts that while the previous RBHOA contract for
27 patrol services was mentioned during the meeting, a copy of that contract was not provided
28

1 to the Board and no document existed at the time of the meeting that reflected the terms
2 voted on by the CGID at the September 15 meeting.

3 Since no document existed prior to the September 15 meeting nor was a document
4 provided to the Board members prior to the meeting, it follows that a request for the same
5 could not be fulfilled. As such, the OAG finds no violation of NRS 241.020(7).

6 **2. The CGID violated the OML where failed to include a copy of a**
7 **public commenter's prepared remarks as part of the minutes**
8 **and/or official record despite being requested to do so.**

9 The OML requires that each public body keep written minutes of its meetings, which
10 must include the details of the meeting and what was discussed. NRS 241.035.
11 Particularly, with respect to public comment, the minutes must include:

12 The substance of remarks made by any member of the general public who
13 addresses the public body if the member of the general public requests that the
14 minutes reflect those remarks or, **if the member of the general public has**
15 **prepared written remarks, a copy of the remarks if the member of the**
general public submits a copy for inclusion.

16 NRS 241.035(1)(d) (emphasis supplied). This right to inclusion of remarks does not extend
17 to any documents or other information that a public commenter may desire to be included
18 in the record. Nevada Open Meeting Law Opinion ("OMLO") 13897-297 (Nov. 20, 2018).

19 Here, prior to its September 15 meeting, the CGID received an e-mail with comments
20 from Louise Pena. There is no dispute that CGID member Huddleston paraphrased
21 portions of Ms. Pena's correspondence during discussion of Agenda Item No. 14
22 (Correspondence written to Board Members). While Mr. Huddleston was reading the
23 correspondence, CGID Chair Hilton interjected and questioned whether the subject of the
24 correspondence was affected by the CGID, as he believed Ms. Pena was objecting to action
25 taken by the RBHOA rather than the CGID. The CGID, through its counsel, assert that
26 Mr. Huddleston continued reading the balance of the letter and confirmed paraphrasing
27 portions of it. Upon conclusion, Mr. Hilton objected to having the letter submitted into the
28

1 CGID records because Ms. Pena was not asserting any objection to any action taken by the
2 CGID but rather to action taken by the RBHOA.

3 The minutes of the September 15 meeting reflect the following:

4 ITEM #14: ***Correspondence written to Board Members.*** One letter was
5 received from Rainbow Bend resident Ms. Pena concerning the Rainbow Bend
6 Patrol Contract. She is concerned that the Patrol Contract between the CGID
7 and Rainbow Bend HOA is not legal. She also does not want any more expense
8 or liability insurance cost for implementing the agreement. She believes that
9 the Storey County Sheriff should do the patrols of the neighborhood. Mr. Hart
10 mentioned to keep a record of the letter in our records.

11 As reflected in the September 15 meeting minutes, Ms. Pena made public comments,
12 which were summarized in the minutes as follows:

13 ITEM #16: ***Public Comments:*** Rainbow Bend resident Ms. Pena did not like
14 the comments about the letter concerning Rainbow Bend Patrol she sent to the
15 CGID Board of Directors from Mr. Hilton. She also stated that the Rainbow
16 Bend Patrol Contract with the CGID is not legal. Rainbow Bend resident Ms.
17 Agnew Asked [sic] for a draft of the Patrol Contract with the CGID. She also
18 asked if the Storey County District Attorney has reviewed the Patrol Contract
19 with the CGID.

20 It also appears from the transcript prepared and provided by Complainant, which was
21 reviewed and not disputed by the CGID's counsel,² that during her public comment, Ms.
22 Pena requested the letter to be attached to the minutes of the September 15 meeting.

23 NRS 241.035(1)(d) makes clear that a public body's written meeting minutes must
24 include a copy of an individual's prepared remarks if an individual prepared written
25 remarks and submits a copy of the same for inclusion. OMLO 13897-235 (Oct. 23, 2017)
26 ("[T]he OML does not require a public body to include information into its minutes, at the
27 request of a member of the public, unless the information is the public comment remarks
28 of the member of the public."); OMLO 13897-263 (Jun. 26, 2018) (finding no violation for
the public body's failure to include written remarks in their minutes where the commenter
did not request that they be included); OMLO 2008-03 (Jun. 9, 2008) ("NRS 241.035(1) does

² In its response, the CGID's counsel acknowledged review of Complainant's self-prepared transcript, agreed with other portions of the transcript and did not dispute any part of it. The CGID chose not to submit a copy of the recording of the meeting for the OAG's review.

1 require the public body to append prepared written remarks by a member of the public to
2 minutes if requested....”).

3 The CGID argues that Ms. Pena’s remarks were directed at an action of the RBHOA
4 and not the CGID, thus not appropriate for inclusion in the record of the September 15
5 meeting. The OAG does not find this persuasive. Ms. Pena’s comments directly related to
6 an action item on the CGID’s September 15 agenda—the approval of the RBHOA patrol
7 partnership. The fact that her comments may have included information related to actions
8 by another entity, does not make the entirety of her comments irrelevant. The purpose of
9 the OML’s public comment requirements is to allow the general public to be heard
10 regarding matters within a public body’s jurisdiction and control. See NRS
11 241.020(3)(d)(3).

12 While the CGID included the substance of Ms. Pena’s remarks in its meeting
13 minutes, Ms. Pena specifically requested that the written comments she submitted be
14 included in the record. The CGID should have complied with the request and should have
15 attached the same to the minutes of their September 15 meeting. Their failure to do so
16 resulted in a technical violation of the OML.

17 **3. The CGID did not violate the OML where a quorum of its**
18 **members gathered together without providing notice.**

19 The OML defines a “meeting” to include “[t]he gathering of members of a public body
20 at which a quorum is present . . . to deliberate toward a decision or to take action on any
21 matter over which the public body has supervision, control, jurisdiction or advisory power.”
22 NRS 241.015(3)(a)(1). In turn, the OML defines the term “deliberate” as “collectively to
23 examine, weigh and reflect upon the reasons for or against the action. The term includes
24 without limitation, the collective discussion or exchange of facts preliminary to the ultimate
25 decision.” NRS 241.015(2).

26 The OML specifically excludes from the definition of a “meeting” gatherings of
27 members of a public body which occur at social functions if the members do not deliberate
28 or take action on any matter over which the public body has supervision, control,

1 jurisdiction, or advisory power. NRS 241.015(3)(b)(1). The definition of a “meeting” also
2 excludes gatherings of members of a public body to receive information from the public
3 body’s attorney regarding potential or existing litigation or to receive training regarding
4 the legal obligations of the public body. NRS 241.015(3)(b)(2)-(3).

5 The Complaint asserts that a quorum of the CGID consisting of Mr. Huddleston, Mr.
6 Hilton, and Mr. Hart gathered together on several occasions without proper notice of the
7 meetings. Specifically, the Complaint proffers that these individuals gathered on July 28,
8 August 25, and September 22, 2020 for RBHOA meetings, where Mr. Huddleston serves on
9 the Board, Mr. Hart operates the camera, and Mr. Hilton attends. The Complaint further
10 states that these three individuals attended the Storey County Open-Air Town Hall
11 Meeting on August 27, 2020 as well as a Meet & Greet event on October 10, 2020.

12 In reviewing the evidence provided, the OAG finds that while a quorum of the CGID
13 was present at these events, there was insufficient evidence to show that the quorum
14 gathered and deliberated or to took action on any matter over which the CGID has
15 supervision, control, jurisdiction or advisory power. Accordingly, the OAG does not find a
16 violation of the OML has occurred.

17 **4. The CGID did not violate the OML where it failed to post its**
18 **agendas and notices of meetings in three separate physical**
19 **locations.**

20 Pursuant to the OML, a public body was required to post a copy of the notice of a
21 meeting at its principal office or if there is no principal office, at the building in which the
22 meeting is to be held and at least three other separate prominent places within the
23 jurisdiction of the public body. NRS 241.020(4)(a).³ On March 22, 2020, Nevada Governor
24 Steve Sisolak issued Emergency Directive 006, which among other things, suspended the
25 requirements contained NRS 241.020(4)(a) that public notice agendas be posted at physical
26 locations. Nevertheless, Emergency Directive 006 still required public bodies to comply

27 _____
28 ³ The OML was amended in 2021 to remove the three separate prominent locations requirement. Nevada
Assembly Bill 253, 81st Legislative Session (2021).

1 with the requirements in NRS 241.020(4)(b) and NRS 241.020(4)(c) that public notice
2 agendas be posted to Nevada’s notice website and the public body’s website, if it maintains
3 one.

4 At the onset, the CGID puts forth that NRS 241.020 was written in the disjunctive
5 and that proper notice of a meeting under the OML was satisfied in one of two ways, either:
6 (1) posting at the principal office of the public body; or (2) if there is no principal office, then
7 at the building where the meeting is to be held and at not less than three other separate,
8 prominent places within the jurisdiction of the public body. Thus, the CGID asserts that
9 the requirement to post notice in at least three other separate prominent places within the
10 jurisdiction only applied if the public body does not have a principal office. The OAG takes
11 this opportunity to reiterate that generally, NRS 241.020 required notice to be posted in at
12 least four places at least three working days prior to the meeting. *See Nevada Open*
13 *Meeting Law Manual, § 5.03 Posting the Notice, 12th ed. (January 2016, updated March*
14 *26, 2019).*

15 Here, the instant Complaint asserts that the CGID agendas have not been posted in
16 three other separate locations as required under the OML. The CGID asserts that it has
17 posted notices of its meetings in at least six locations, namely: (1) its principal public office;
18 (2) the Largomarsino Fire Station; (3) the Rainbow Bend Clubhouse; (4) the Lockwood
19 Community Corp. Office; (5) the Lockwood Market; and (6) the Hillside Elementary
20 Schools. In fact, the Agenda for the September 15, 2020 CGID meeting provides the
21 following notice:

22 NOTICE: This notice is posted per NRS 241 at the Largomarsino Fire Station,
23 Rainbow Bend Clubhouse, Lockwood Community Corp. Office, Lockwood
24 Market and Hillside Elem. School. Copies are also available at the CGID office
at 800 Peri Ranch Rd.

25 Given the foregoing, the OAG finds insufficient evidence to support an OML
26 violation.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2023, I served the foregoing **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:

Canyon General Improvement District
800 Peri Ranch Road #103
Sparks, Nevada 89434

Certified Mail No.: 7020 2450 0001 1950 7061

Jerry Snyder
Jerry SnyderLaw
429 West Plumb
Reno, Nevada 89509
Counsel for Canyon General Improvement District

Certified Mail No.: 7020 2450 0001 1950 7078

Jennifer Agnew
[REDACTED]
[REDACTED]

Certified Mail No.: [REDACTED]

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