

1 OFFICE OF THE ATTORNEY GENERAL
2 STATE OF NEVADA

3 In the matter of:
4 LANDER COUNTY BOARD OF
5 COMMISSIONERS
6

OAG FILE NO.: 13897-453
**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

7
8 **BACKGROUND**

9 Jodi Moore filed a complaint with the Office of the Attorney General (“OAG”) alleging
10 violations of the Nevada Open Meeting Law (“OML”) by the Lander County Board of
11 Commissioners (“Board”), stemming from its June 9, 2022, meeting. Specifically, Ms.
12 Moore alleged the Board deliberated and took action on a matter not on the public notice
13 agenda for the meeting.

14 The OAG has statutory enforcement powers under the OML and the authority to
15 investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040.
16 The OAG’s investigation of the Complaint included a review of the Complaint, the response
17 from the Board and the agendas, minutes and recordings of the Board’s May 26, June 9,
18 and June 23, 2022, meetings.

19 After investigating the Complaint, the OAG determines that the Board violated the
20 OML by deliberating and taking action at its June 9 meeting to void an action taken at its
21 May 26 meeting without that item being listed on its public notice agenda.

22 **FINDINGS OF FACT**

23 1. The Board held a public meeting on May 26, 2022. During agenda item #5,
24 the Board voted to instruct staff to get proposals from insurance brokers to represent it for
25 POOL/PACT matters.

26 2. During deliberation on the item, members of the Board noted that they did
27 not have any complaints with the County’s current broker, but wanted to give others an
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1 opportunity for the contract and to see if the County could achieve a better commission
2 rate.

3 3. The Board held a public meeting on June 9, 2022. After the call to order, but
4 prior to the first public comment period or any action items, the County Manager gave a
5 report under a portion of the agenda titled “Staff Reports on meetings, conferences and
6 seminars attended.” During his report, the County Manager stated that he had been
7 incorrect about information he had given the Board at its last meeting. Specifically, he
8 noted that any insurance broker representing the County in POOL/PACT matters would
9 receive at least the same 7% base commission that its current broker received, and the
10 County could not secure a lower rate under the POOL/PACT terms. He recommended the
11 Board not require staff to expend time and effort, at a cost to the County, to secure
12 proposals from other brokers as it could not result in monetary savings to the County.

13 4. The five members of the Commission then discussed the reasons for and
14 against getting broker proposals, particularly the time and effort required to do so and the
15 opportunity for other brokers in the community to have an opportunity to represent the
16 County and make the large commission. The back-and-forth discussion between members
17 lasted for about 10 minutes.

18 5. The County Manager specifically asked the Board for a consensus whether
19 staff should disregard the Board’s prior action and offered to add the issue as an agenda
20 item at a future meeting. A majority of Board members indicated that they did not want
21 to seek proposals, but the members did not call for or cast votes.

22 6. The Board held a public meeting on June 23, 2022. Item #15 on the public
23 notice agenda stated: “For discussion and possible action to approve/disapprove the
24 renewal proposal from the Nevada Public Agency Insurance Pool (POOL) in the amount
25 not to exceed \$520,306.49 and approval for payment out of FY 22/23 funds.” During the
26 item, the Board received a presentation from the insurance agency and then voted to
27 approve the renewal.

1 NRS 241.015(1); *The Commission on Ethics of the State of Nevada v. Hansen*, 134 Nev. 304,
2 307, 419 P.3d 140, 142 (2018). A discussion that leads to informal action may also violate
3 the OML. *Sandoval* at 155.

4 There is no dispute here that the Board acted under the OML on May 26 by voting
5 to instruct staff to solicit proposals from insurance brokers. The County Manager then
6 returned to the Board on June 9, after gathering additional information, and asked the
7 Board whether staff should continue with that action. The Board members discussed the
8 reasons for and against soliciting proposals. Specifically, one Board member was still in
9 favor of soliciting proposals so that other brokers in their small community could have an
10 opportunity to seek the large commission received under the contract and other Board
11 members felt the cost to the County of soliciting proposals was not worth undertaking if
12 the County would not be able to save money with a new broker. The OAG finds this
13 discussion to meet the definition of “deliberation” under the OML.

14 Further, after there was a clear dispute among Board members as to whether to
15 continue with the May 26 action, the County Manager specifically asked the Board for a
16 consensus as to whether staff should solicit proposals, which he then received from a
17 majority of Board members. The OAG finds this to be “a decision made by a majority of
18 the members present” meeting the definition of “action” in NRS 241.015(1)(a). This is
19 enforced by the fact that at the June 23 meeting, the Board approved payment for a renewal
20 of their insurance policy without further discussing or acting on which broker would be
21 used during a public meeting.

22 Because the Board deliberated and took action on an item not on the agenda for its
23 June 9 meeting, it violated NRS 241.020(3)(d)(1)’s requirement that the agenda include a

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1 clear and complete statement of the topics scheduled to be considered at the meeting.¹
2 *Sandoval* at 155 (finding where an agenda did not properly apprise the public that the body
3 would engage in a discussion leading to informal action to obtain a redacted report, the
4 body violated the OML).

5 **SUMMARY**

6 Upon investigating the present Complaint, the OAG makes findings of fact and
7 conclusions of law that the Lander County Board of Commissioners violated the OML as
8 described above.

9 If the Attorney General investigates a potential OML violation and makes findings
10 of fact and conclusions of law that a public body has acted in violation of the OML, “the
11 public body must include an item on the next agenda posted for a meeting of the public
12 body which acknowledges the findings of fact and conclusions of law.” NRS 241.0395. The
13 public body must treat the opinion of the Attorney General as supporting material for the
14 agenda item(s) in question for the purpose of NRS 241.020. *Id.* Accordingly, the Board
15 must place an item on its next meeting agenda in which it acknowledges the present
16 Findings of Fact and Conclusions of Law (“Opinion”) resulting from the OAG’s investigation
17 in this matter. The Board must also include the OAG Opinion in the supporting materials
18 for its next meeting.

19 Dated: January 5, 2024

20 AARON FORD
21 Attorney General

22
23 By: /s/ Rosalie Bordelove
24 ROSALIE BORDELOVE
25 Chief Deputy Attorney General

26 ¹ The OAG acknowledges that the action taken in violation of the OML was effectively an instruction for
27 inaction by staff. However, public was still entitled to notice that it would take place. Indeed, in response to
28 an argument that there may be other brokers that would want the contract, one Board member stated if there
were, why weren’t they attending the meeting to say so. This is precisely the intent of the OML. “Nevada’s
Open Meeting Law seeks to give the public clear notice of the topics to be discussed at public meetings so that
the public can attend a meeting when an issue of interest will be discussed.” *Sandoval* at 155.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 2024, 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:

Jodi M. Moore
[Redacted]

Certified Mail No.: [Redacted]

Lander County Board of Commissioners
c/o Brian R. Hardy, Esq. and Harry L. Arnold, Esq.
Marquis Aurbach Chtd.
10001 Park Run Drive
Las Vegas, Nevada 89145

Certified Mail No.: 7020 2450 0001 1950 7160

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