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April 16, 2024

Via U.S Mail

Victoria T. Poulsen
[REDACTED]

Maryan Hollis
[REDACTED]

**Re: Open Meeting Law Complaint, OAG File No. 13897-476
Nye County Board of County Commissioners**

Dear Ms. Poulsen and Mrs. Hollis:

The Office of the Attorney General (“OAG”) is in receipt of your complaints (“Complaints”) alleging violations of the Open Meeting Law (“OML”) by the Nye County Board of County Commissioners (“Board”) regarding its April 4, 2023, meeting.

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 Complaints and attachments, the Response on behalf of the Board, and the agenda and video recording for the Board’s April 4, 2023, meeting. After investigating the Complaints, the OAG determines that the Board did not violate the OML as alleged in the Complaints.

FACTUAL BACKGROUND

The Board held a public meeting on April 4, 2023. The meeting had one physical location listed on the agenda in Tonopah, Nevada, a livestream of the meeting available on the internet and a call-in number available for public

comment. Two other physical locations were open to the public, in Pahrump and Beatty, Nevada, but were not listed on the agenda. The agenda contained the following statement with respect to telephonic public comment:

The Chair of the Board of County Commissioners will open public comment periods by announcement. Commenters must press *9 on their telephone keypads to notify Administration they wish to speak.

Item #18 on the public notice agenda stated:

For Possible Action – Discussion, deliberation to adopt, amend and adopt or reject Nye County Resolution No. 2023-10: A Resolution Supporting Coyote Calling Contests Within Nye County.

When Item #18 was called during the meeting, the County Manager asked to add a few resolutions from other counties on the topic as they had not been included in the original meeting materials or distributed to the Board. Commissioner Strickland mentioned she was aware of resolutions from several other counties as well. The Board voted to accept the additional backup and to revisit the item after lunch to give staff time to distribute the new materials. Complainant Hollis asked how and when public would be able to view the materials and was told by Board staff that the public would be able to view them at the same time as the Board members, upon their return from the lunch break.

The Board reconvened the meeting after the break, heard an unrelated item, and then the Chair of the Board verified with staff on the record that each physical location had received copies of the new materials and that there were copies available for the public. One member of the Board noted that the public “seemed satisfied with their copies.” Staff also confirmed that the new materials had been posted to the Board’s website.

After hearing another unrelated item, the Board returned to Item #18 about 15 minutes after its return from lunch. The Board discussed the item and then called for public comment. Many commenters in the physical locations made comments, including Complainant Hollis who requested the item be tabled to give public more time to review the materials. When the Chair asked if there were any commenters on the phone, staff informed him that there were none. The Board then voted to pass the proposed resolution.

Complainant Poulsen, who attended the meeting via telephone, alleges the Board violated the OML by not allowing her or any other telephone participants to speak during public comment on Item #18. Complainant Hollis alleges the Board violated the OML by providing additional materials to the Board members during the meeting and not giving public sufficient time to review the materials prior to hearing Item #18.

LEGAL ANALYSIS

The Nye County Board of County Commissioners, as the governing body of a Nevada county, is a public body as defined in NRS 241.015(4) and is subject to the OML.

A. The Board was not required to offer telephonic public comment and OAG possesses insufficient evidence that Complainant Poulsen was prevented from making public comment.

The OML requires public bodies to include periods devoted to comments by the general public during their meetings. NRS 241.020(3)(d)(3). Public bodies are permitted to conduct meetings by means of a remote technology system if members of the public are permitted to “(1) Attend and participate at a physical location designated for the meeting . . . ; or (2) Hear and observe the meeting, participate in the meeting by telephone and provide live public comment during the meeting using the remote technology system.” NRS 241.023(1)(b).

Here, there is no dispute that the Board included periods devoted to comments by the general public, specifically, one during Item #18. The Board members attended multiple locations, but collectively used a remote technology system to conduct the meeting. Public was permitted to attend at any of three physical locations, including one designated on the agenda, meeting the requirements of NRS 241.023(1)(b)(1). Thus, the Board was not required to offer telephonic participation¹ and if any failure to accept public comment from the phone line occurred, it would still not have violated the OML.

The OAG further finds that even if the Board were required to offer telephonic public comment for the meeting, there is insufficient evidence that

¹ The OAG notes that this requirement has since been changed by Assembly Bill 219 of Nevada’s 2023 Legislative Session. However, AB 219 had not yet taken effect at the time of the meeting at issue in this opinion.

Complainant Poulsen was prevented from making such comment. The Board presented evidence that Complainant Poulsen had called into the phone line during the public comment period at issue, that the public comment system was functional,² and that the staff member operating the remote technology system checked that no telephone participants had dialed *9 to request to speak during Item #18. Complainant Poulsen does not allege that she dialed *9 to request to speak, only that she was left on mute and was unable to speak. Thus, the OAG does not find a violation of the OML in this respect.

B. The Board did not violate the OML by distributing additional supporting material during the meeting.

Public bodies are required to provide supporting material to members of the public upon request and “make at least one copy of the documents . . . available to the public at the meeting to which the documents pertain.” NRS 241.020(7). If supporting material is provided to member of a public body during a meeting, the material must be “made available at the meeting to the requester at the same time the material is provided to the members of the public body.” NRS 241.020(8)(b). In addition, if supporting material is provided to the members of the governing body of a county whose population is 45,000 or more during a meeting, the body must post the supporting material to its website within 24 hours after the conclusion of the meeting. NRS 241.020(9).

The materials at issue consisted of 9 pages of resolutions from 3 different counties in Nevada regarding the same issue that the Board was about to address. While Commissioner Strickland may have possessed additional resolutions, only those three that were brought by the County Manager were distributed to the Board members. The additional materials for Item #18 were distributed to the Board members upon their return from their lunch break and were available to the public at the physical locations at the same time. Indeed, the Chair took a pause prior to recalling Item #18 to ensure that the materials had been distributed to the public as well as the members. The materials were also posted to the Board’s website during the meeting, although they were not required to be posted until the next day.

Complainant Hollis’ main allegation seems to be that the public did not have adequate time to review the additional materials prior to the item being

² It undisputed that callers were able to comment via the telephone line on other items during the meeting. In addition, when the video recording restarted after the lunch break, staff can be heard dialing into the remote technology system and the system announcing, “hand raising is on.”

recalled and that it is unfair to distribute materials during a meeting for this reason. The OML specifically contemplates supporting material being provided to a body during a meeting and only requires that public be able to view it at the same time. The OML does not contain a requirement that public, or public body members, be given supporting material within any particular time frame to review, just that public have the same access as members. Thus, the OAG does not find a violation of the OML with respect to the Board's handling of supporting material for Item #18.

CONCLUSION

Upon review of your Complaints and available evidence, the OAG has determined that no violation of the OML has occurred. The OAG will close the file regarding this matter.

Sincerely,

AARON D. FORD
Attorney General

By: /s/ Rosalie Bordelove
Chief Deputy Attorney General

cc: Marla Zlotek, Chief Deputy District Attorney
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