

ADAM PAUL LAXALT
Attorney General



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701

J. BRIN GIBSON
First Assistant Attorney General
NICHOLAS A. TRUTANICH
Chief of Staff
KETAN D. BHIRUD
General Counsel

November 20, 2018

Via U.S. Mail

Tonja Brown

**Re: Storey County Board of Commissioners - Open Meeting
Law Complaint, O.A.G. File No. 13897-297**

Dear Ms. Brown:

The Office of the Attorney General ("OAG") is in receipt of your complaint ("Complaint") filed on July 9, 2018 alleging a violation of the Open Meeting Law ("OML") by the Storey County Board of County Commissioners ("Board") on June 5, 2018.

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 and NRS 241.040. In response to the Complaint, the OAG reviewed the Complaint and its attachment, the response from the Board ("Response"), the agenda, minutes and video of the relevant portion of the Board's June 5, 2018 meeting, other Board agendas and minutes relevant to the Complaint.

FACTUAL BACKGROUND

At the Board's June 5, 2018 meeting, Complainant spoke during the second public comment period for over seven minutes. During her comment, she was interrupted only by the Commission Chair's notification that normally members of the public were limited to three minutes and Chair was inclined to allow her more time provided that she move her comments toward a connection with Storey County. During her public comment at approximately 11:03:53 AM Complainant stated that she provided a photo lineup array to the Board and to the public "for the public record" prior to passing out documents. At the conclusion of her public comment at approximately 11:08:15, Complainant also provided copies of additional documents to members of the Board, stating "and here's [sic] your copies that details it all." Complainant made no other requests to have her comments or documents made part of the minutes.

At the July 8 meeting, the Board approved minutes for the June 5, 2018 meeting, which included a summary of Complainant's testimony, but did not include any of the documents Complainant provided including the phone lineup array. Complainant lodged this complaint with the OAG on July 9, 2018.

The Complaint alleges that Complainant presented the Board with dozens of documents for the public record at its June 5, 2018 meeting that were not included in the minutes of the meeting approved on July 3, 2018.

LEGAL ANALYSIS

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; and NRS 241.040.

The OML applies only to a "public body" as defined in NRS 241.015(4). Here the Complaint is alleged against the Board, which is a Board of County Commissioners created by NRS 244.010 to govern Storey County, which was created by NRS 243.335. As such, it is a public body as defined in NRS 241.015(4).

THE BOARD DID NOT VIOLATE THE OML BY FAILING TO INCLUDE THE PHOTO LINEUP ARRAY OR ADDITIONAL DOCUMENTS IN ITS MINUTES.

Public comment must be taken "At the beginning of the meeting before any items on which action may be taken are heard by the public body and again before the adjournment of the meeting" or after each action item, but before the public body votes.¹ The substance of the remarks made by any member of the general public who addresses the public must also be included in the minutes.² Finally, "Any other information which any member of the public body requests to be included or reflected in the minutes."³

Complainant stated that the photo array that she provided was for the public record. The OAG has previously explained that "members of the general public cannot be required to anticipate that the Board would treat the terms "record" and "minutes" differently.⁴ The average member of the general public does not understand that a difference exists."⁵ Thus, Complainant's statement that the photo lineup array was being provided "for the public record" was sufficient to notify the public body that it should treat that as a request to include the photo lineup array in the minutes.

However, members of the public do not have a right to include any information that they desire to be included in the record.⁶ That right extends

¹ NRS 241.020(3)(c)

² NRS 241.035(1)(d)

³ NRS 241.035(1)(e)

⁴ OMLO 2005-03, Attorney General file No. 04-068

⁵ Id

⁶ As all public bodies are required to retain copies of their minutes for 5 years and must provide free copies of those minutes (NRS 241.035(2)) it is es-

only to members of the public body under NRS 241.035(1)(e). The OML provides all members of the public a right to have the substance of their remarks included in the minutes of a meeting, or if they choose, a copy of their written remarks.⁷ Neither the photo lineup array, nor the other materials provided by Complainant are ever described as remarks, testimony or comments before the Board, or in the written Complaint. Thus, Complainant had no statutory right and the Board had no statutory obligation to include them in the minutes regardless of the request.⁸ Therefore, the Board's decision not to include documents beyond written remarks does not violate the open meeting law.

CONCLUSION

The Legislative intent behind the OML is that all actions of public bodies be taken openly and their deliberations be conducted openly. The OML requires actions be taken in the public so that the public may see and understand them; it is not a license for the public to publish extraneous materials in the minutes of any public body they choose. Having determined that no violations of the OML have occurred, the OAG will close the file regarding this matter.

ADAM PAUL LAXALT
Attorney General

By: /s/ Gregory D. Ott
GREGORY D. OTT
Chief Deputy Attorney General

cc: Keith Loomis, Storey County Deputy District Attorney
P.O. Box 496
Virginia City, NV 89440

essential that public bodies retain the right to refuse to include documents other than written remarks presented by members of the public.

⁷ NRS 241.035(1)(d)

⁸ In the future the Board may minimize the possibility of a complaint by clearly informing the member either that it will voluntarily include documents in the minutes or that there is no right to include extraneous documents in the minutes and it will not do so.