



STATE OF NEVADA
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April 12, 2016

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Via First Class Mail

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Gerald A. Lent
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Reno, Nevada 89511

Re: Open Meeting Law Complaint, A.G. File No. 13897-182
Nevada Board of Wildlife Commissioners

Dear Ms. McCollum and Mr. Lent:

The Office of the Attorney General (OAG) is in receipt of your respective complaints alleging a violation of the Nevada Open Meeting Law (OML) by the Nevada Board of Wildlife Commissioners (Commission) at a public meeting held on January 29, 2016. Because you have both alleged the same basis for a violation, your complaints are addressed jointly in this response.

FACTUAL BACKGROUND

The Commission members met in Las Vegas on January 29, 2016; the public was provided teleconference access to the meeting at the Nevada Department of Wildlife's (NDOW) regional offices in Reno and Elko. The complainants attended the meeting at the Reno location and allege that the Commission violated NRS 241.010(2) because the first forty-two (42) minutes of the teleconferenced meeting were not audible.

In response to the complaints, the OAG reviewed NDOW's video recording of the Las Vegas meeting, together with a response from the Commission's legal counsel and narratives from the complainants as direct witnesses of the audio problem at the Reno location.

NDOW staff checked the teleconferencing system the day before the meeting and again on the morning before the meeting began and found no problems. Before Commission Chairman Jeremy Drew convened the meeting, he tested the audio connection by asking both the Reno and Elko locations whether they could hear him, and receive confirmation that those present could hear the audio. Chairman Drew then instructed that the remote microphones in Reno and Elko be muted to avoid disruptive feedback in the Las Vegas location, and convened the meeting at approximately 10:05 a.m. with the reasonable belief that persons at both remote locations could hear the Commission meeting.

The meeting progressed through six agenda items during the forty-two (42) minutes at issue. The agenda for the Commission meeting permitted public comment on each action item; there were three action items heard in that 42-minute period, item numbers 2, 5 and 6. Chairman Drew called for public comment after the Board ended its discussion of agenda item #2, "Approval of Agenda."¹ The Reno location informed Chairman Drew that there was no public comment. Likewise, when Chairman Drew called for public comment on agenda item #5, "Approval of Minutes" from the Commission meeting held November 13 and 14, 2015, the Reno location indicated that there was no public comment. At this point in the meeting, Chairman Drew had not received any complaint or other evidence that those present at the Reno location could not hear the meeting.

During public comment on agenda item #6 - "Draft Fiscal Year (FY) 2017 Predation Management Plan"- Fred Voltz, a member of the public present at the Reno location, interrupted to advise that those present at the Reno location could not hear the meeting. Upon being advised by Mr. Voltz of the audio problem, Chairman Drew allowed Lynn Cullens to finish providing public comment, and then recessed the meeting to allow staff to improve the audio.

NDOW staff worked to address the problem and improve the audio at the Reno location by positioning an amplifier, speaker and microphone over the conference phone, then the meeting resumed at approximately 11:10 a.m. Ms. McCollum alleges that the "attempted fix increased the volume, but the sound was distorted, fading in and out, and was oftentimes impossible to understand." However, after the audio was amplified, the record indicates that Ms. McCollum and other members of the public offered extensive public comment, and no further complaints from the Reno or Elko locations were received. No action was taken on agenda item #6, and the meeting proceeded without further incident.

¹ The OAG notes that an action item for approval of the agenda is an unnecessary procedure under the OML. A public body may only consider topics that are clearly and completely stated on the agenda posted for the meeting, and may at the direction of the presiding officer take agenda items out of order, combine two or more agenda items for consideration, remove an item from the agenda, or delay discussion relating to an item on the agenda at any time. NRS 241.020(2)(d).

DISCUSSION AND ANALYSIS

NRS 241.010 provides:

1. In enacting this chapter, the Legislature finds and declares that all public bodies exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

2. If any member of a public body is present by means of teleconference or videoconference at any meeting of the public body, the public body shall ensure that all the members of the public body and the members of the public who are present at the meeting can hear or observe and participate in the meeting.

Subsection 2 of NRS 241.010 was enacted during the 2013 Legislative Session by Assembly Bill 65. This provision does not require public bodies to allow the public to attending meetings by teleconference; rather, the plain language of the statute requires that, *if one or more members of a public body participate in a meeting by teleconference or videoconference, everyone, including the public, must be able to hear each member of the public body and follow the discussion.*² "When the language of a statute is plain and unambiguous, a court should give that language its ordinary meaning and not go beyond it." *Nevada Power Co. v. Pub. Util. Comm'n*, 122 Nev. 821, 837, 138 P.3d 487, 495 (2006) (citations omitted). The intent of this subsection, to ensure that the public in attendance can hear each member of the public body and follow the discussion when one or more of the members are participating remotely, is evidenced in the legislative history for Assembly Bill 65.

At the Commission meeting on January 29th all Commissioners were present in Las Vegas; no members of the Commission participated by teleconference. Therefore, NRS 241.010(2) did not apply and no violation of that statutory provision occurred.

However, public bodies must also comply with the mandate set forth in NRS 241.010(1) that "their actions be taken openly and that their deliberations be conducted openly." Furthermore, NRS 241.020(1) requires that meetings of public bodies be "open and public." In this instance, the record demonstrates that the Commission made reasonable efforts to uphold these directives. The Commission met in Las Vegas yet provided teleconference access for the public in Reno and Elko. The Commission made reasonable efforts to ensure that the teleconference access was functioning properly before commencing the meeting. When advised that those present in Reno could not hear the meeting, Chairman Drew recessed the meeting until NDOW staff could address the problem and improve the audio to the Reno location.

² Because NRS 241.020(1) requires that meetings of public bodies be "open and public," if all the members of a public body appear by teleconference, the public body must provide a location where members of the public may attend the meeting, listen, and provide public comment.

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While it is unfortunate that audio difficulties occurred, the Commission acted reasonably in response to the problem. No violation of NRS 241.010 occurred.

CONCLUSION

No violation of NRS 241.010 occurred; the OAG will be closing its file on this matter.

Sincerely,

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Attorney General

By:



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cc: Harry Ward, Deputy Attorney General
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