



1 ALLEGATION NO. 3: The complainant alleges that county commissioners serving  
2 on the Livestock Board as nonvoting ex officio members regularly vote at meetings.  
3 While this alleges a violation of Lander County Code 1.08.070(D) and raises the issue of  
4 whether actions taken by the Livestock Board have any effect, it does not state a claim  
5 under the OML.

6 ALLEGATION NO. 4: The complainant poses the question of whether the  
7 Livestock Board is subject to Robert's Rules of Order. There is no statutory requirement  
8 that public bodies follow Robert's Rules of Order or any other rules of parliamentary  
9 procedure, therefore, this does not state a claim under the OML.

10 ALLEGATION NO. 5: The complainant alleges that Bert Ramos was reappointed  
11 by the BOCC to the Livestock Board at the August 11, 2016 meeting without submitting  
12 a letter of intent, and has not been allowed to resign from the Livestock Board. There are  
13 no such statutory requirements, therefore, this does not state a claim under the OML.

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  
16 241.040. The investigation of the Complaint included OAG review of the public notice  
17 and agenda, supporting material, recordings and/or minutes of the BOCC meetings held  
18 on August 11, 2016, and March 23, 2017, together with a written response to the  
19 Complaint from Lander County Chief Deputy District Attorney Hy Forgeron.

#### 20 LEGAL STANDARD

21 The legislative intent of the OML is that actions of public bodies "be taken openly,  
22 and that their deliberations be conducted openly." NRS 241.010(1); *see also, McKay v.*  
23 *Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) ("the spirit and policy  
24 behind NRS chapter 241 favors open meetings"). Public bodies working on behalf of  
25 Nevada citizens must conform to statutory requirements in open meetings under an  
26 agenda that provides full notice and disclosure of discussion topics and any possible  
27 action. *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).

28 . . .

1 NRS 241.020(2) (d) (1) requires that an agenda must include a “clear and complete  
2 statement of the topics scheduled to be considered during the meeting” while NRS  
3 241.020(2) (d) (2) requires that an agenda must include a “list describing the items on  
4 which action may be taken and clearly denoting that action may be taken on those items.”  
5 *See Sandoval*, 119 Nev. at 154. In addition, if a public body intends to consider whether  
6 to take administrative action regarding a person, the name of that person must be  
7 included in the agenda. NRS 241.020(2) (d) (5).

8 Any action taken in violation of the OML is void. NRS 241.036. A public body that  
9 takes action in violation of the OML is not forever precluded from taking the same action  
10 at a subsequent meeting to ensure any action taken in violation has legal force or binding  
11 effect. *Valencia v. Cota*, 617 P.2d 63, 65 (Ariz. Ct. App. 1980). A public body may take  
12 subsequent action to correct an alleged OML violation, which may include taking  
13 corrective action pursuant to NRS 241.0365.<sup>2</sup>

14 Corrective action, however, requires that the public body engage in an *independent*  
15 *deliberative action* in full compliance with the OML. *See, e.g., Page v. MiraCosta*  
16 *Community College Dist.*, 102 Cal. Rptr. 3rd 902, 930 (Cal. Ct. App. 2009); *Colorado Off-*  
17 *Highway Vehicle Coalition v. Colorado Bd. of Parks and Outdoor Recreation*, 292 P.3d  
18 1132, 1137–38 (Colo. Ct. App. 2012); *Zorc v. City of Vero Beach*, 722 So. 2d 891, 902 (Fla.  
19 Dist. Ct. App. 1998); *Pearson v. Selectmen of Longmeadow*, 726 N.E.2d 980, 985 (Mass.  
20 App. Ct. 2000); *Gronberg v. Teton County Housing Authority*, 247 P.3d 35, 42 (Wyo. 2011).

## 21 FINDINGS OF FACT

22 1. The BOCC is a “public body” as defined in NRS 241.015(4) and is subject to  
23 the OML.

24 2. The Livestock Board is created pursuant to Lander County Code  
25 1.08.070(E)(2), is a “public body” as defined in NRS 241.015(4) and is subject to the OML.

---

26  
27 <sup>2</sup> Because, corrective action pursuant to NRS 241.0365 must be taken within 30  
28 days after the alleged violation, the requirements of that provision are not applicable in  
this instance.



1           3.     The BOCC held a public meeting on August 11, 2016, with Chairman  
2 Bakker and Commissioners Art Clark III, Doug Mills, Steven Stienmetz and Patsy Waits  
3 in attendance.

4           4.     Agenda Item No. 11 for the BOCC's August 11, 2016 meeting read as  
5 follows:

6                   Discussion and possible action regarding appointment or  
7 reappointment of three individuals to service on the Battle  
8 Mountain Livestock Advisory Board (6 person board, which  
9 includes 1 Commissioner/5 vacancies from July 1, 2016 through  
10 June 30, 2018, a two year term, and to consider all of the  
11 following applicants to include: a) Casey Gunther; b) Rick Gobel;  
12 c) Bert Ramos; and all other matter properly related thereto.

13           5.     The August 11, 2016 meeting minutes reflect that that under Agenda Item  
14 No. 11 Chairman Bakker stated that the applicants to be considered included Fetterly, in  
15 addition to Gunther, Gobel, and Ramos. Commissioner Mills moved to appoint Gunther,  
16 Gobel, Ramos, and Fetterly to the Livestock Board. The motion was seconded by  
17 Commissioner Clark and passed unanimously.

18           6.     The BOCC held a public meeting on March 23, 2017, with Chairman Mills  
19 and Commissioners Allan, Bakker, Clark, and Waits in attendance.

20           7.     Agenda Item No. 11 for the BOCC's March 23, 2017 meeting read as follows:

21                   Discussion and possible action to correct the appointment of  
22 Charlene Fetterly to the Battle Mountain Livestock Events  
23 Center Advisory Board, and all other matters properly related  
24 thereto.

25           8.     The March 23, 2017 meeting minutes reflect that under Agenda Item No. 11  
26 Chairman Mills directed Chief Deputy District Attorney Forgeron to explain the necessity  
27 of taking action to remedy an OML violation in the appointment of Fetterly to the  
28 Livestock Board on August 11, 2016. Bakker then moved to appoint Fetterly to the  
Livestock Board. The motion was seconded by Clark and passed unanimously.

...

...

1 **CONCLUSIONS OF LAW**

2 1. By failing to specify that the possible action was the appointment or  
3 reappointment of four individuals and failing to include the name of Fetterly on Agenda  
4 Item No. 11 for the August 11, 2016 meeting, the BOCC violated NRS 241.020(2)(d)(1)  
5 and (5).

6 2. The BOCC took action to remedy this violation and effectively appointed  
7 Fetterly to the Livestock Board under Agenda Item No. 11 at the March 23, 2017  
8 meeting.

9 **SUMMARY**

10 Because the OAG finds that the Lander County Board of County Commissioners  
11 has taken action in violation of the OML, the BOCC must place on its next meeting  
12 agenda these Findings of Fact and Conclusions of Law and include them in the  
13 supporting material for the meeting. The agenda item must acknowledge these Findings  
14 of Fact and Conclusions of Law to be the result of the OAG investigation in the matter of  
15 Attorney General File No. 13897-225, and that it has been placed there as a requirement  
16 of NRS 241.0395.

17 Furthermore, the OAG strongly recommends that the Lander County Board of  
18 County Commissioners members and staff receive training in the OML; the OAG is  
19 available to provide OML training upon request.

20 DATED this 13<sup>th</sup> day of April, 2016.

21  
22 ADAM PAUL LAXALT  
23 Attorney General

24  
25 By:   
26 BRET KANDT  
27 Chief Deputy Attorney General  
28

